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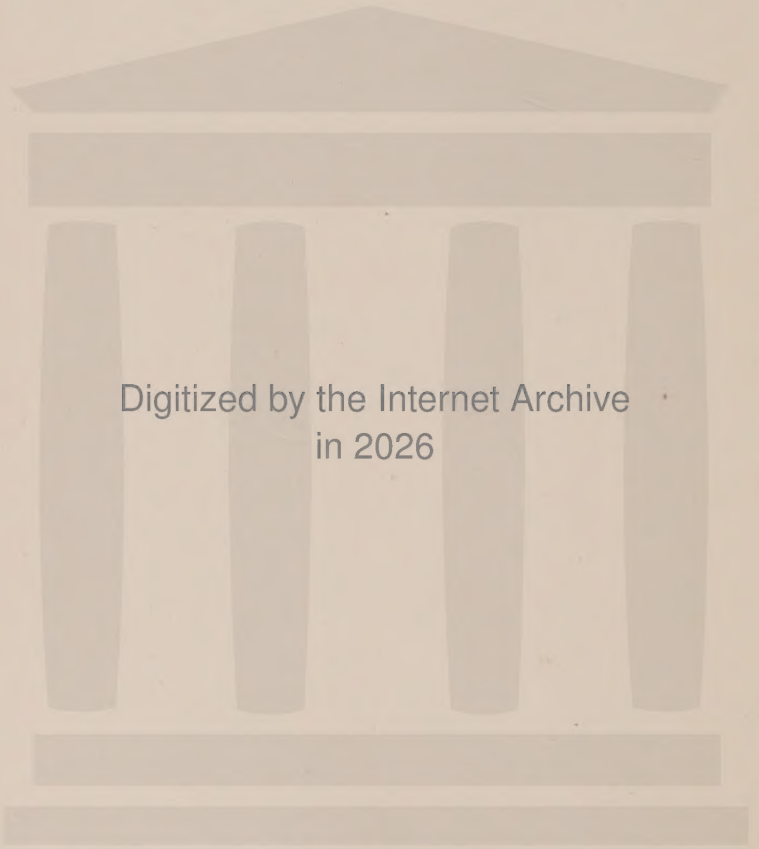
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THE NATIONAL LAND SYSTEM

1785-1820

BY
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TO MY
FATHER

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PREFACE

It is the purpose of this study to show how the national public lands passed into private ownership during the first great period of our land system. It is concerned, therefore, only with the disposal of the lands by the nation, it does not presume to discuss the uses to which the lands were put. It considers the land grants for education, for example, merely as a way in which great areas passed from the public domain to the control of the States; it does not work out the management of those grants. In short, it deals with the origin of the public domain and with every form of disposition which was in use before 1820.

Some explanation may be necessary for the choice of 1820 as the termination of this study. That date marks the close of the first great period in the history of the national land system. Between 1776 and 1820 the public domain had been formed, the land system had been organized, the granting of land for education and military services had been introduced, and grants for internal improvements had been discussed, while the methods for confirming foreign titles had been well worked out. But especially it was the period of the credit system, the operation of which well deserves consideration. There may be some difference of opinion as to the other periods into which a study of the land system

may be divided. I would have the second end with the Preëmption Act of 1841, the third with the Homestead Act of 1862, and the fourth with the rise of the Conservation Movement, which certainly marks a new period in our land history.

John Fiske has told us that "questions about public lands are often regarded as the driest of historical deadwood. Discussions about them in newspapers and magazines belong to the class of articles which the general reader usually skips. Yet there is a great deal of the philosophy of history wrapped up in this subject." And he was very near the truth. A transaction with the land office was a very unromantic performance, and yet it was of great importance in the life of the settler. And if the subject is dull in itself it is closely related to some of the most interesting phases of our history. Without some knowledge of the land system a study of the westward movement would be only superficial, and a large part of the history of the West must be written in terms of land.

It is a pleasure to acknowledge here my indebtedness to Professor Max Farrand, of Yale University, who first called my attention to the importance of this subject, and to my colleagues, Professor E. D. Adams and Professor H. E. Bolton, who have offered valuable suggestions. The map of the Indian Cessions was based on the excellent collection in the Eighteenth Annual Report of the Bureau of Ethnology.

PAYSON J. TREAT.

August 2, 1910.

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THE NATIONAL LAND SYSTEM

The National Land System

CHAPTER I

THE ORIGIN OF THE PUBLIC DOMAIN

A study of the American Land System should of necessity commence with some discussion of the origin of the public domain. Before the Revolution the various colonies had for years been engaged in the disposal of land and several distinct systems had been developed based upon differing physical and economic conditions, but no uniform system could, under the circumstances, be worked out. Nor did the establishment of a central government necessarily mean that a national land system could be inaugurated. The very nature of the loose defensive union of the thirteen colonies precluded any grant of power to a central legislature over the lands within the states, while at the commencement of the Revolution the idea of national lands outside the boundaries of the states had not developed. Under these circumstances there could be no field for national land legislation. At first the object of the struggling patriots was to assert as large territorial claims as possible for the United Colonies so that when independence was achieved the new nation would possess an extensive area. This could

be easily done because six of the colonies had sea to sea claims based on their ancient charters. These parchments of Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, and Georgia were considered good against England for the land as far west as the Mississippi, while New York had a supporting claim, as suzerain of the Iroquois Indians, to the country west of the Delaware River. Franklin's draft of the Articles of Confederation of May 10, 1775, shows that at that time the charter claims of these colonies were not contested.

But soon this first assertion was questioned. Six of the states had very definite boundaries and they could present no charter claims to the rich lands beyond the Alleghanies. They then believed that, even should the western lands be held against England as parts of the states, nevertheless Congress should have the power to limit the boundaries of the great states, and to erect new colonies. This was shown in the Dickinson draft of the Articles of Confederation of July 12, 1776, but the clause was struck out in the Committee of the Whole. From this arose a number of questions regarding the ownership of the lands beyond the Alleghanies which developed into one of the most perplexing domestic problems confronting the new nation, and one which had to be settled wisely and well.

First came the question, do the lands beyond the mountains belong to the claimant states under their charters or to the United States as the result of a successful revolution? Against charter claims were

cited the Royal Proclamation of 1763,[1] which restricted the right of the colonies to grant lands west of the headwaters of streams flowing into the Atlantic, and the Quebec Act of 1774, which attached the country north of the Ohio River to the Province of Quebec. And before this question was answered there arose another: if the lands belong to the states, then to which states, for conflicting claims had already arisen under the ancient charters?

It was the presence of these conflicting claims in the west which made the later public domain possible. If the claims of the various states to the western lands had been well founded it is doubtful if any dispute would have arisen. Virginia held unquestioned vast unappropriated areas east of the mountains, and Massachusetts possessed great vacant tracts in Maine. But no state could present a claim to the western lands which could not be questioned, many people thinking the Proclamation of 1763 and the Quebec Act limited all the colonies to the mountains. In the northwest four states claimed lands with overlapping bounds, and this would present a serious problem in boundary adjustment should the charter claims be accepted.

It seemed unwise to Congress to raise these questions during the actual struggle with Great Britain. In order to make the position of the United States as strong as possible it would make use of both

1 Alvord, The Genesis of the Proclamation of 1763, Mich. Hist. and Pioneer Soc. Collection, v. 39, p. 52. "The proclamation did not set western limits to the colonies, nor was such the intention of the ministry at the time."

theories.[2] It would maintain the sea to sea claims of the states, and, should these be denied, it would claim the western lands as successor to the rights of the King of England.

The small states, with fixed boundaries, early questioned the territorial claims of the seven larger ones. It was Maryland who persistently attacked the theory of the state claims to the west. Over against it she argued for a common right and a common ownership. At first she would waive any discussion of the charter claims provided that Congress was authorized to fix the western boundaries of the claimant states. This was the position taken by Dickinson in 1776 and Maryland alone voted for it on October 15, 1777.[3] Rhode Island, New Jersey and Delaware opposed the land claims, but on financial grounds, for they were willing that the sovereignty over the lands should be vested in the claimant states provided the lands themselves pass to the United States.[4] In spite of their protests a clause was added to the proposed Articles of Confederation, on October 27, 1777, which, after setting up a Court of Commissioners to determine disputed boundary claims, provided also " that no state shall be deprived of territory for the benefit of the United States.[5]

Although defeated in Congress the small states did not give up the fight. In 1778 Rhode Island and New Jersey presented amendments to the proposed

[2] See Thompson Papers, N. Y. Historical Col. 1878, 109-141.
[3] J. IX., 807. [4] Adams, 23. [5] J. IX., 843.

Articles of Confederation which would turn all the crown lands within the states over to the United States, while the sovereignty would remain in the states[6]. These amendments were overwhelmingly defeated and it was well that such was the case for national sovereignty as well as common ownership of the western lands was necessary. It was the great service of Maryland to render this possible.

The part she played in causing the claimant states to cede their western lands need not be detailed here.[7] Maintaining that they had "not the least shadow of exclusive right," and that the unsettled country, "if wrested from the common enemy by the blood and treasure of the thirteen states, should be considered as common property,"[8] subject to the control of Congress, she refused to ratify the Articles of Confederaton until the disputed question was in some way settled. Especially did she fear the financial and political benefits accruing to Virginia from her vast claimed lands.

Even if the position taken by Maryland and the other non-claimant states were correct it was unwise to insist upon it in opposition to the opinions of seven of the more powerful states. A denial of charter claims or an enforced curtailment of them would have been disastrous in those days of state jealousies. A much more expedient proposition was now suggested, one which avoided all discussion

[6] J. XI., 639, 650. [7] See Adams.

[8] Instruction to Delegates in Congress. Dec. 15, 1778. Read May 21, 1779. J. XIV., 619-622.

of territorial claims and aimed at the cession of the disputed land to the nation for the common good. An early proposal for cessions of western lands by the states was made by the Committee on Finance on September 19, 1778,[9] and a year later Virginia and the other states were urged to cease granting western lands during the continuance of the war.

This proved to be a real solution of the problem. New York offered to cede her western lands, without reserve, in 1780. Virginia made a first, but unsatisfactory, offer in January, 1781, and a month later Maryand ratified the Articles of Confederation. Between 1782 and 1802 the seven claimant states made cessions of their western lands, and by the latter date the public domain covered all the territory between the Alleghanies and the Mississippi, with the exception of Kentucky, which was reserved by Virginia and later erected as a state, and of the Connecticut Reserve in Ohio. In bringing about these cessions the influence of Maryland was negative while that of New York was positive. Both states deserve great credit.[10]

With these cessions the public domain was formed. From a political point of view they were most important. They were a pre-requisite to the

[9] J. XII., 931.

[10] For the cessions see Adams, Maryland's Influence upon Land Cessions to the United States. J. H. Univ. Studies, 3d series. Sato, History of the Land Question in the United States. J. H. Univ. Studies, 4th series. Welling, The Land Politics of the United States. Papers of the N. Y. Hist. Society, 1888.

completion of the Confederation, although the first one was not perfected until twenty months after the ratification of Maryland. With them vanished the fear of any enormous development in wealth and power on the part of the favored states, and the settlement of conflicting boundary lines was avoided. The Congress of the Confederation exceeded its powers in accepting them and in providing a government for the lands which they covered. With the possession of a public domain, a "common estate," came a real bond of union in the critical period of the republic.

With the exception of the Connecticut Reserve all the cessions were of territory and jurisdiction. New York offered to cede soil and jurisdiction or to retain all or part of the jurisdiction. Connecticut, in her offer of October 10, 1780, proposed to cede the soil but retain the jurisdiction. This would have proven acceptable to some of the states, and even Alexander Hamilton had agreed that the jurisdiction over the land should remain in the states.[11]

Such cessions of territory would have created a public domain, but the controversy which would have arisen over the conflicting claims to jurisdiction in the northwest might have wrecked the infant nation. Maryland feared the political power which so large an extent of authority would give the claimant states. It is easy to understand how perfect a solution was found when unquestioned cessions of

[11] Hamilton Works, I., 262.

soil and jurisdiction were effected. Controversies between the states were quieted, the central government gained political and financial strength, and a uniform system for the control and disposal of the western lands was rendered possible.[12]

Of the seven deeds of cession three were without conditions of any kind while four contained stipulations which are more carefully discussed in another chapter.[13] New York defined her own limits and ceded her right to the lands northward and westward of these boundaries, without condition as to disposition. Virginia ceded all right, title and claim "to the territory or tract of country within the limits of the Virginia charter" lying northwest of the Ohio River. No mention was made of the claim of Virginia to Kentucky, although the first offer of 1781 had included a provision that this territory should be guaranteed to Virginia. In 1783 Congress had refused to make such a guarantee.[14]

[12] The importance of the fact that the first cessions were of disputed claims should be noted here. Virginia, New York, Pennsylvania, and Massachusetts all retained unoccupied land which they continued to dispose for some years. At a later period Massachusetts was accused of selfishness in not ceding her unappropriated lands in Maine. Such a charge is not to the point. These lands were never "crown lands" in the sense of the term as used after 1763. No other state could lay claim to them, and although a cession of them to the United States would have added strength to the nation it was not seriously demanded nor expected. The lands ceded later by North Carolina, South Carolina and Georgia were considered crown lands according to the Proclamation of 1763.

[13] Donaldson, 65-82 for deeds; 82-86 for reservations, also see Chap. 13.

[14] J. IV., 265.

Virginia incorporated certain conditions in her deed of 1784. The territory ceded should be laid out into states; the expense incurred by Virginia in conquering and holding this country should be reimbursed by the general government; the French inhabitants and other settlers at Kaskaskia, Vincennes and the neighboring settlements, who had professed themselves citizens of Virginia, should have their possessions and titles confirmed to them; one hundred and fifty thousand acres should be laid off for General George Rogers Clark and his men, who had conquered the Illinois country for Virginia; and lands should be reserved between the Scioto and the Little Miami rivers for the military bounties promised by Virginia to her troops upon continental establishment should there be an insufficient quantity of good land in the tract already reserved for them in Kentucky. But the most important provision was as follows: all lands in the ceded territory, not covered by the above reservations or by the bounties promised by Congress to the Continental Army "shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the Confederation or Federal Alliance of the said states, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever."

Of all the conditions made by the states this one

is the most important. From this time rarely could a proposition to cede or grant lands be made in Congress without giving rise to these inquiries: is it for the common good? will it be a bona fide disposition of a common property? North Carolina and Georgia later inserted this condition in their deeds.

The Massachusetts cession was without reserve. It covered the lands claimed under her charter, west of the western boundary of New York.[15]

Connecticut, however, was apparently less generous, and she retained a "western reserve" of some 3,800,000 acres which was used as a fund to reimburse sufferers during the raids of the Revolutionary War, as well as to form a basis for the present school fund of the state. In the reserve, which extended for one hundred and twenty miles west from the Pennsylvania line, Connecticut re-

[15] Massachusetts and New York both claimed the lands in western New York. In 1784, a federal court was appointed, under the Articles of Confederation, to determine the dispute. Massachusetts claimed the land under her charter, New York claimed it as suzerain of the Iroquois. The dispute was settled amicably, without reference to the court, in 1786, Massachusetts receiving the soil and New York the jurisdiction of the lands in question. This compromise gave a more definite sanction to the claim of Massachusetts to the western lands than did the mere acceptance of the Massachusetts cession by Congress, for in the latter instance no investigation of the soundness of the claim was made. This is the more interesting because a similar claim of Connecticut for land in Pennsylvania was rejected by the Federal Commissioners at Trenton in 1782, but the charter rights were apparently affirmed by the acceptance of her cession by Congress. It should be noted that the disputed lands in Pennsylvania had been actually granted to Penn by charter. New York had no such claim to the lands in the western part of the present state.

tained both soil and jurisdiction. In 1797 she offered to cede the jurisdiction over the reserve and in 1800, after some discussion, Congress passed an act of acceptance. Thirty years later, when the land question assumed a sectional aspect, Connecticut and Massachusetts were held up as selfish commonwealths in contrast with the magnanimous conduct of Virginia and the Southern states. In extenuation it should be remembered that at the time of the cessions Connecticut was the only state ceding claims which did not possess unoccupied lands. Massachusetts, New York, Virginia, and the Southern states all held within their accepted boundaries considerable areas of which they were disposing. Her claims to the Wyoming country had been defeated and Pennsylvania had profited thereby, it was not unreasonable for her to endeavor to retain some of her domain. These facts caused the acceptance of the cession of 1786, a cession which allowed her to retain land already ceded to the Union by both New York and Virginia, and in fact violated the conditions of the Virginia cession.

These cessions covered the territory of the old Northwest. The United States secured jurisdiction over all but the Connecticut Reserve, and over this in 1800. But as has been shown, not all this country came into the public domain for the French settlers and others had claims which must be confirmed, while the military bounties of Virginia had also to be satisfied.

Under the Confederation only one cession was

made south of the Ohio. South Carolina, in 1787, ceded a narrow strip, twelve miles wide, from her western limits to the Mississippi, and this cession, made without condition or reserve, was "for the benefit of the said states." For several years this tiny bit of land was entirely cut off from the rest of the public domain, until it was annexed to the North Carolina cession later.

Some political importance has been attached to the fact that five of the state cessions were made under the Confederation and two under the present Constitution. The Articles of Confederation conferred no power on Congress to receive or govern any common lands, but Congress assumed the power. In order to remedy this omission the new Constitution provided that "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." From time to time the question was raised as to whether the Constitution superceded the prior deeds of cession, for if it did the stipulations of the deeds would not be binding. The issue was never fairly joined although the Supreme Court has held that the power of Congress over the public lands was "without limitation," [16] and as the grantor states ratified the Constitution it might be assumed that they waived their former conditions. As a matter of fact the conditions in the deeds were in every case faithfully carried out, unless the strictest possible

[16] U. S. v. Gratiot, 14 Peters, 526.

construction is placed on the general provisions of the Virginia and Georgia articles.

In another chapter [17] the cessions of North Carolina and Georgia are discussed at some length. Made respectively in 1790 and 1802, after the westward migration had commenced, it goes without saying that considerable portions of their western lands had been sold or granted away. In the North Carolina cession the soil was so covered with warrants, surveys, and patents, that it was never brought under the national land system nor disposed of in the usual manner, while in the southwest the Yazoo land claims caused considerable annoyance for investors, settlers, and Congress.

Thus, in briefest fashion, the origin of the Public Domain has been outlined. Primarily the result of the successful issue of the Revolution, it stands, however, as the result of the cessions by the states themselves. Such a solution avoided the host of controversies which the conflicting claims of state against nation and state against state would have produced. In some cases the titles which the states passed were of questionable validity, but as all the states quit-claimed their rights the central government did not need to search the title, it was only when states tried to reserve land for themselves that any question was raised. But before any of the cessions were completed a discussion had arisen as to the proper disposition of the new domain.

[17] Chap. 13.

CESSIONS OF WESTERN LANDS

1780, Feb. 19. Act of New York Legislature.
March 7. Laid before Congress.
Oct. 10. Act of Connecticut Legislature.

1781, Jan. 2. Act of Virginia Legislature.
Mar. 1. New York deed of cession executed in Congress.

1782, Oct. 29. New York cession accepted by Congress.

1783, Sept. 13. Virginia cession rejected.
Oct. 20. Second Virginia Act.

1784, March 1. Virginia cession completed.
June 2. Act of North Carolina Legislature.
Nov. 13. Act of Massachusetts Legislature.
Nov. 20. Act of North Carolina Legislature repealed.

1785, Apr. 19. Massachusetts cession completed.

1786, May 11. Second Act of Connecticut Legislature.
May 26. Connecticut cession completed.

1787, March 8. Act of South Carolina Legislature.
August 9. South Carolina cession completed.

1788, Feb. 1. First Act of Georgia Legislature.
July 15. Georgia offer rejected.

1789, Dec. 22. Act of North Carolina Legislature.

1790, Feb. 25, North Carolina cession completed.

1802, April 24. Articles of Agreement and Cession entered into between the Commissioners of the United States and of Georgia.
June 16. Ratified by the Georgia Legislature.

CHAPTER II

THE ORIGIN OF THE FEDERAL LAND SYSTEM

The acquisition of the public domain made possible a national system, and Congress was called upon to regulate the disposal of the western lands. The discussions of the past few years had revealed a general agreement of opinion as to the policy which should control the land system. The lands were considered primarily as a source of revenue, and Congress was expected to so provide that the lands would serve to relieve the financial burdens of the struggling nation. Every thoughtful citizen could appreciate the financial possibilities of the new domain, although the tendency was to exaggerate the immediate value of the vacant lands. Speculations in land were not new in this country, great schemes had been under discussion in the western country even before the Revolution, and the New England colonies had at times profited through their land sales. To the south Virginia [1] and North Carolina [2] had opened land offices and expected to increase their annual revenue and to sink their public debt. It was very natural, therefore, for persons in and out of Congress to look upon the western lands as a valuable asset, which should be carefully managed. These acres were to

[1] Hening, X, 60-65. [2] N. C. Records, 24:43.

be sold for a fair sum, and not to be given away as had so often been the case in colonial days.

Congress could not prepare a plan of disposal for the lands until the national title was clear to at least one section of the territory, and it was not until March, 1784, that the New York and Virginia cessions had quieted all claims to the southern portion of the old Northwest, while even then the Indian title remained to be dealt with. But before this time a plan had been published which merits more than a passing notice. Early in 1781, Pelatiah Webster, relying upon the future cessions of the states, had proposed a system for the disposal of the lands which is highly suggestive.[3]

He dismissed with scant comment the proposal that the entire domain be sold or mortgaged to foreign states at the present time: "It would be like killing the goose that laid an egg every day in order to tear out at once all that was in her belly." Instead, the ceded territory should be carefully marked off from the unceded and intrusions on it should be rigidly prohibited. First, the land should be surveyed into townships[4] of six, eight or ten

[3] In the collected essays of Pelatiah Webster this essay on the "Extent and Value of our Western Unlocated lands, and the Proper Method of disposing of them so as to gain the greatest possible Advantage from them" is stated to have been first published in Philadelphia on April 25th, 1781, but in Almon's "London Remembrancer" for 1782 the essay appears anonymously under the signature of "A Gentleman of Philadelphia" and the date of February 17, 1781.

[4] The township idea was early before Congress. In 1778 Congress offered land in townships of from 20,000 to 60,000 acres to Hessian deserters. The land was to be provided by the states. J. X. 405.

miles square; then it should be sold at auction to the highest bidder, and the minimum price should be one Spanish dollar per acre; purchasers should be obliged to settle and improve the land within two or three years or forfeit the same; and, finally, the townships should be laid out in courses or tiers, and should be sold in that fashion—only when one tier was settled should the next be placed on sale.

There were certain advantages in this system which the author proceeded to develop. It would push out settlements in close columns, much less assailable by the enemy and more easily defended. Laws, customs and police could be easily extended, and it would prevent one great abuse, that of the absentee proprietor profiting through the hardships and labors of the pioneers. The Indians should be kindly treated, and, in order to avoid friction, intruders should be removed, for Webster had little sympathy for settlers without permission—they merited punishment rather than reward. He held also that salt licks, coal and mineral lands should be reserved for the public use.

The merit of this plan does not lie in any originality of the author. It will later be shown that almost every one of these provisions may be found in the land system of the New England colonies, but Pelatiah Webster was apparently the first to apply this colonial experience to the problem which was soon to confront the Congress of the Confederation.

Between 1781 and 1784, when the first Congressional land committee reported, the general subject of the western lands was several times before Congress, and the discussions doubtless served to develop the opinions on the subject of a land system. When the various states offered to cede their claims only one of them made any stipulation as to the method of disposing of the land. Connecticut, in her first offer of October, 1780, had insisted upon the extension of the township system over the area ceded by her. The land was "to be laid out and surveyed in townships in regular form to a suitable number of settlers in such manner as will best promote the settlement and cultivation of the same —according to the true spirit and principles of a Republican state."[5] This system of disposition was accepted by the committee which reported on the cessions of New York, Virginia, and Connecticut, and the petitions of the Indiana, Vandalia, Illinois and Wabash companies, for it recommended that the new states "shall be laid out into townships of the quantity of about six miles square." No action was taken on this report by Congress.[6]

In the spring of 1783 interest in the actual disposition of the western lands was stimulated by the proposition on the part of certain of the officers in

[5] MSS., Conn. State Library, Susq. Settlers, I, 128.

[6] Report presented Nov. 3, 1781, but entered on the Journal of May 1, 1782, J. IV, 20-25; 227. This recommendation was doubtless due to the fact that the committee was composed of Northern men, from New Jersey, Pennsylvania, New Hampshire, Rhode Island, and Maryland.

the army at Newburgh to found a new state northwest of the Ohio. This plan was discussed in the early part of April, and the first propositions called for the satisfaction in that region of the bounty offers of Congress, while additional lands would be given to those settling within a year.[7] "These rights being secured, all the surplus lands shall be the common property of the state, and disposed of for the common good; as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of government, and other public uses." Conditions of settlement and cultivation were to be attached to each grant, with penalties of forfeiture for noncompliance. The United States was expected to defray the expenses of the march to the Ohio, and to furnish subsistence for three years, and, finally, the total exclusion of slavery from the region was desired.

While the officers were considering their plan of settlement and before their petition was actually presented another proposition was laid before Congress which would have used the western lands not only for the satisfaction of the military bounties but for the settlement of the sums due for arrearages and half pay. In another chapter these details of the report will be discussed, but there were features of more general interest in this proposal of Mr. Bland, of Virginia, of June 5, 1783.[8] The territory

[7] Pickering, I, 457, 546.

[8] Seconded by Hamilton. Ban. I, 312-4.

to be set apart for the accounts due the soldiers was to be "laid off into districts not exceeding two degrees of latitude and three degrees of longitude each, and into townships not exceeding . . . miles square." The exterior lines of the districts were to be run by surveyors appointed and paid by the United States. Out of every hundred thousand acres granted to the soldiers there should be reserved ten thousand acres, which would remain forever a common property of the United States unless disposed of by Congress, and the proceeds of these reserved tracts might be used for "the payment of the civil list of the United States; the erecting frontier forts; the founding of seminaries of learning; and the surplus after such purposes (if any) to be appropriated to the building and equipping a navy, and to no other use or purpose whatever." The lands to be granted to the soldiers were to be free from all taxes and quit-rents for seven years after the passing of the Ordinance.

These plans, known as the "Army Plan" and the "Financier's Plan," were alike in their insistence upon the township system, but they differed as to the ownership of the unappropriated land. In the former the land would belong to the state and would be used for local needs, there would be no ownership of land within the state by the nation; in the latter the national domain was to be assured through definite reserves and their proceeds were to be used for general needs. The "Financier's Plan" was referred to the Grand Committee of

May 30th, and no action seems to have been taken on it.

The petition of the officers was finally presented to General Washington on June 16th and forwarded by him to Congress on the next day.[9] Of the two hundred and eighty-five petitioners, one hundred and fifty-five were officers of the Massachusetts line, forty-six from Connecticut, thirty-six from New Jersey, thirty-four from New Hampshire, thirteen from Maryland, and one from New York. Rufus Putnam, in a letter to Washington which accompanied the petition, discussed the territory which they desired and expressed the wish that the grants be made by townships, six miles square, or six by twelve, or six by eighteen, to be subdivided by the proprietors to six miles square, "that being the standard on which they wish all calculations may be made." They also desired reserves for schools and for the ministry. Washington approved the plan heartily and wrote to Congress that not only was the region designated the one which should first be settled, but that it could not "be so advantageously settled by any other class of men as by the disbanded officers and soldiers of the army," for this plan of colonization "would connect our government with the frontiers, extend our settlements progressively, and plant a brave, a hardy and respectable race of people as our advanced post, who would be always ready and will-

[9] Petition in Cutler, I, 159; Washington's letter in Cutler, I, 172; Putnam's letter in Cutler, I, 167.

ing (in case of hostility) to combat the savages and check their incursions." Washington also urged the matter in person while the Congress sat at Princeton.[10] The members pleaded the incomplete cession of the lands, and finally Congress stated on October 29th, on the memorial of General Armand, that they could not at that time make any appropriation of land, " much less can they assign certain districts to any particular corps." [11]

The next year saw the completion of the Virginia cession and then, for the first time, was a committee appointed to prepare a plan for the disposal of the lands. The idea of using the lands as a fund for meeting the national debt was uppermost and the committee naturally prepared a plan with this in view. The committee of 1784 was composed of Jefferson, of Virginia, chairman; Williamson, of North Carolina; Howell, of Rhode Island; Gerry, of Massachusetts, and Read, of South Carolina. It was not expected that these men would devise an entirely new land system for the public domain, and it would have been difficult for any untried plan to be adopted by Congress. Instead they would turn to the methods used in the states which they represented and they would endeavor to apply the best of the colonial experience to the problem before them. For that reason it is very necessary that some attention be paid to the methods employed by the colonies before the Revolution in the disposal of their lands.

[10] Cutler, I, 177. [11] J. IV, 304.

Two very definite land systems had developed during the colonial period—the New England and the Southern. "Township planting" was the basis of the New England system and this was perfected in the 18th century. The laying out of townships by the colony preceded private ownership, and there could be no title to land outside a township.[12] Within the township the land was divided into tracts by the colony, the town, or the proprietors, these tracts were definite in amount, carefully laid out, plats were prepared and bounds were recorded. And the surveys almost always preceded settlement. The towns were responsible for the accuracy of the surveys and town-officers, fence viewers, took care that the bounds were accurately determined. In the Eighteenth Century groups of townships were frequently laid out, sometimes in tiers, and a favorite area was a tract of six miles square. The custom of selling these townships at auction also appeared. The success of the New England system of township planting so impressed the home government that the instructions of Robert Johnson, Governor of South Carolina, of June 10, 1730, contained directions to mark out eleven townships within sixty miles of Charlestown, in square plats of 20,000 acres each.[13] Ten townships were thus laid out.[14] Others proposed to extend the system over larger areas. Kennedy's plan of

[12] This statement describes the general system. There might be exceptions.

[13] P. L. I, 46.

[14] Ramsay, I, 108.

1752 would have used the township system in his western colony.[15] Hazard's scheme of 1755 promised that the settlement would be laid out into townships and the tracts divided by lot.[16] Connecticut men carried this township system into the Wyoming country,[17], and also into West Florida in their Natchez Colony,[18] and Connecticut, in 1780, tried to bind the nation to establish the system in the tract which she offered to cede. New England was strongly attached to this system. Grants of land for education and for religious purposes formed part of the New England system and conditions for the improvement of the lands were frequently inserted in the grants.

In the South the land was taken up by the location of warrants on any part of the unappropriated area. The surveys were supposed to be made by public surveyors but as most of them were made by deputies of little experience the possibility of error was always present.[19] The Virginia system of 1779 called for warrants, certificates, caveats, and grants —a clumsy system compared with the simple deed in New England—and the records were poorly kept.[20] North Carolina had a similar system, and it was being extended over the present states of Kentucky and Tennessee.

So far as the acquirement of land was concerned the main difference between the two systems lay in the fact that in the South individual initiative

[15] Frothingham, 116.
[16] Broadside, Conn. State Lib.
[17] Miner; Wyoming, 104.
[18] P. L., I, 133, 257.
[19] Roosevelt, III, 8.
[20] Hening, X, 50.

played a larger part. A person could select a desirable tract of unappropriated land and he could have it laid off for him by a county surveyor under his direction. He did not need to consider the relation of other pieces of property to his own. This was properly called "indiscriminate location." But in New England the waste land in the township was laid off by colonial or local committees who fixed the bounds of the various tracts with reference to the neighboring allotments. These divisions were at once recorded so that the possibility of over-lapping claims was very slight. An individual could not engross the best land for himself—the proprietors or the townspeople shared in each division of the unappropriated land. If the Southern system encouraged initiative and resourcefulness the New England system afforded a security of title which facilitated an orderly settlement of new lands.

The relative value of these systems is evident. The one provided a sure protection against overlapping surveys and title disputes, and it placed the town or colony as guaranty for the accuracy of the survey and the title which passed thereby. Also, as the settlement was made by townships it tended toward compactness over against the system of indiscriminate location in the South. The lack of proper surveys, the careless manner of recording titles, the use of natural bounds, caused constant confusion and endless litigation. Both systems were the embodiment of colonial experience. That of New England was adapted to a free population,

loving community life and forced to it, as well, for protection against the savages and mutual help during the severe winters. The other was the development of a society where large plantations and slave labor, less hostile Indians and a favoring climate permitted the extension and scattering of settlement over the coast lands, while in the back country the system enabled the pioneers to locate the good lands along the streams.

Jefferson's committee reported to Congress on the seventh of May, and although three of the five members came from southern states they recommended the distinctly New England system of discriminate prior surveys.

Their report[21] provided for the disposition of the lands after they had been purchased from the Indians and laid off into states. The territory was to be divided into "hundreds," of ten geographical miles square, each mile containing 6086.4 feet, and the "hundreds" into lots one geographical mile square, each containing 850.4 acres. The lines were to run due north and south, by the true meridian, and east and west. Surveyors and registers were to be appointed by Congress. The land was to be sold by warrants,[22] and these could be purchased by specie, loan office certificates—reduced to specie by the scale of depreciation, certificates of the liquidated debt, or military warrants. Prospective settlers would purchase warrants, for a lot or a "hundred," and then locate them, which explains an in-

[21] J., IV, 416.

[22] No price per acre was specified.

teresting provision, drawn from Virginian experience,[23] which stated that no patent should issue until the warrant and certificate had been in the hands of the register for . . . months, during which time a person claiming under a prior location could file a caveat and the conflicting claims would then be settled by arbitration.

The important features of this report were, in brief, that surveys should precede sales; "hundreds," of ten geographical miles square, subdivided into lots, were to be laid off; and the proceeds were to be applied to the sinking fund solely. There was no provision for education or religion.

Although this report was in Jefferson's handwriting[24] yet one can hardly infer that he "invented" the system which was outlined. This report combined the New England system of surveys with the southern system of disposition—the use of warrants, certificates and caveats. But the latter procedure was not incorporated in the system as finally adopted. The merit of the report of 1784 lies in the fact that the committee proposed a better system than the one which was in use in the majority of the states which they represented.

On May 28th, Congress voted not to consider the report at that time, only North Carolina voting for immediate action.[25]

Almost a year passed before Congress once more took up the question of the public domain. Settlers

[23] Hening, X, 50. Act of 1779. [24] Ban., I, 159.
[25] J., IV, 419.

were passing over the mountains to the Ohio country,[26] the soldiers were demanding their promised bounty, the need of an increased revenue was keenly felt, and, moreover, far-sighted men realized the importance of establishing a permanent system for the settling of the western lands.

In the summer of 1784, Washington made a journey into the west to examine the portages between the Potomac and James rivers on the Atlantic side, and the Ohio and Kanawha on the western side of the mountains.[27] Although he did not reach or cross the Ohio yet he gathered all the information he could about that region and communicated his observations regarding the public domain to Jacob Read, then a member of Congress.

He was impressed with the need of a progressive and compact settlement of the West, but if this was to be secured Congress would have to act rapidly. "Such is the rage for speculating in and forestalling of lands on the north-west of the Ohio that scarce a valuable spot, within a tolerable distance of it, is left without a claimant. Men in these times talk with as much facility of fifty, an hundred, and even five hundred thousand acres, as a gentleman would formerly do of one thousand."[28] He pointed out the conduct of these people, roving about on the Indian side of the Ohio, marking out lands, surveying and settling them, and causing discontent among the Indians. He proposed that Congress

[26] Ban., I, 333, 368. [27] Ban., U. S., VI, 125.
[28] Nov. 3, 1784. Ban., I, 387.

should purchase enough land from the Indians to make one or two states, and sell the land at a price that would discourage monopolizers and yet not be burdensome for real occupiers. Furthermore Congress should declare the acts of the trespassers beyond the Ohio null and void and should declare all intruders on the Indian lands outlaws and fit subjects for Indian vengeance.

In this letter and in one of March 15, 1785, to Richard Henry Lee, President of Congress, Washington pointed out the desirability of selling a small amount of land at a medium price.[29] He firmly believed in "progressive seating," as he described it, yet the conditions which he deplored northwest of the Ohio were but reproductions of those south of the river, where, under the Virginian system, the lands were being taken up. "Progressive seating" could best be obtained under the New England system of "township planting," yet it does not follow that Washington had that system in mind. These recommendations of an authority on western conditions being placed in the hands of leading members of Congress[30] must undoubtedly have received some consideration from those who perused them.

On March 4, 1785, the report of 1784 was again taken into consideration. It was read a second time on March 16, and, after debate, was referred to a committee of one member from each State, whose most valuable members were probably William

[29] Ban., I, 416.

[30] Lee showed the letter to Grayson. Ban., I, 425.

Grayson, of Virginia, and Rufus King, of Massachusetts.[31]

For a month this committee had the subject under consideration, and finally they presented a report on the 14th of April, which was much more carefully worked out than the report of the year before.[32] In brief, they retained the rectangular townships, but reduced the size to seven miles square and substituted statute miles for geographical miles, while they insisted upon "township planting"—for the land was only to be sold in tracts of that size. The land was to be sold at auction, with a minimum price of $1.00 per acre, and reserves were set apart for schools, for religious uses, and for the future disposition of Congress.[33]

The day after the report was presented, Grayson forwarded a copy to General Washington, knowing his interest in any action Congress might contemplate regarding the public lands, and he gave, at some length, the reasons advanced by the advocates of the measure.[34]

[31] The committee: Long, (N. H.); King, (Mass.); Howell, (R. I.); Johnson, (Conn.); R. R. Livingston, (N. Y.); Stewart, (N. J.); Gardner, (Pa.); J. Henry, (Md.); Grayson, (Va.); Williamson, (N. C.); Bull, (S. C.); Houston, (Ga.). Howell and Williamson had been on the Committee of 1784. Jefferson had sailed for Europe in 1784.

[32] J., IV, 500.

[33] Grayson to Washington, April 15th, gives the impression that the report was made on April 12.—Bancroft, I, 425. Monroe to Jefferson, April 12th, "A report drawn principally by Col. Grayson will be delivered in a few days."—Monroe's Writings, I, 70. The report is in Grayson's handwriting.—Ban., I, 180, n.

[34] April 15. Ban., I, 425.

Surveys were advocated because they would enable information to be gained concerning the lands, because they would preclude "controversy on account of bounds to the latest ages," and because the surveys into squares were the least expensive—there being only two sides of the square to be run in most cases.

Sale by auction was introduced because it would give equal advantage to those away from the lands. Sale by township was defended because "the Eastern States, where lands are more equally divided than in any other part of the continent, were generally settled in that manner; that the idea of a township, with the temptation of a support for religion and education, holds forth an inducement for the purpose of purchasing and settling together; that the Southern mode would defeat this end by intruding the idea of indiscriminate locations and settlements, which would have a tendency to destroy all these inducements to emigration which are derived from friendships, religion, and relative connections; that the same consequences would result from sales in small quantities under the present plan." Moreover, such a laying-off of the country tended to an equal representation, while the expense and delay would prevent division into smaller tracts.

Under this system the poorer classes would unite to purchase a township; if a speculator purchased one he would not be able to hold it on account of the high price in the first instance and interest

charges, and if, in spite of these, he still should buy one, then the great design of the land office, "which is revenue," would be answered.

Furthermore, it was said that "the offering a small number of townships for sale at a time is an answer to the objection on account of delay, and at the same time it prevents the price from being diminished, on account of the markets being overstocked," and it was pointed out that "the present plan excludes all the formalities of warrants, entries, locations, returns, and caveats, as the first and last process is a deed."

The sale of townships in the different states was pronounced "conformable to the principles of government, one state having an equal right to the best lands at its market with the other; as also the disposing of its public securities in that way." "If the country is to be settled out of the bowels of the Atlantic States, it is but fair the idea of each state's contributing its proportion of emigrants should be countenanced by measures operating for that purpose."

And, finally, the advocates of the report agreed "that if the plan should be found by experience to be wrong, it could easily be altered by reducing the quantities and multiplying the surveys."

Grayson then proceeded to state some of the ideas which clashed during the drafting of the report. "Some gentlemen looked upon it as a matter of revenue only, and that it was true policy to get the money without parting with inhabitants to

populate the country, and thereby preventing the lands in the original states from depreciating. Others (I think) were afraid of interference with the lands now at market in the individual states. Part of the Eastern gentlemen wish to have the land sold in such a manner as to suit their own people, of whom I believe there will be great numbers, particularly from Connecticut. But others are apprehensive of the consequences which may result from the new states taking their position in the confederacy. They, perhaps, wish that this event may be delayed as long as possible."

A very informing letter was this one of Grayson's, and from it can be secured a very good idea of the discussions which took place in committee while the Ordinance of 1785 was being drafted. One thing is very clear, the New England members had carried their way in every important particular. As Grayson asked for Washington's opinion of the proposed plan, the latter forwarded a criticism on April 25. He dismissed the "township planting" with a single sentence—"if experience has proven that the most advantageous way of disposing of whole townships is by whole townships, there is no arguing against facts."[35] His main objection was directed against the proposed sale of the lands in the respective States. He believed there was no good reason for it, that it would lead to State jobbing, and that a central land office would be more convenient and would encourage competition.

[35] Ban., I, 430.

This proved to be one of the first features of the Ordinance to be amended.

With the presentation of the report the discussion was transferred to the halls of Congress. It could hardly be expected that so uncompromising a measure could be carried without a struggle, and as the vote of seven States was necessary for passage, no one section of the country could carry the measure against a united opposition.

In Congress the opposition was mainly directed against the "township planting" feature of the report. There is no record of any Southern member urging the system of "indiscriminate locations,"[36] which at the very time was being extended by Virginia and North Carolina, apparently all accepted the advantages of the rectangular surveys before sale. Typical of the spirit of the times was the passage, by the New York Legislature, on April 11, of a land law[37] which provided for townships of six miles square, and should a body of persons unite to purchase such a township they would receive land for schools and a minister and five per cent. of the price for roads; but smaller tracts, up to five hundred acres and laid off in equilateral squares, might be sold. Accepting the rectangular

[36] Rufus King to Gerry, April 26, 1785: "We have been this fortnight about a land ordinance—Virginia makes many difficulties—the eastern States are for actual survey, and *sale by Townships,* the Southern States for indiscriminate Locations, etc. What will pass, if anything does, is wholly uncertain."

[37] Loudon's N. Y. Packet, April 18, 1785. Congress was then in session in New York city.

surveys did not, however, mean an acceptance of the New England system of "township planting." The delegates from the South, therefore, sought to amend the clause which provided that the land could only be sold by townships; they would make it possible for settlers to purchase smaller amounts wherever they desired.

This, then, was a clash between the strict New England system of compact settlements and discriminate locations and a modified Southern system of rectangular surveys but individual locations.

For over a month the land ordinance was under consideration. In that time some of the details were altered and the most stoutly contested feature was compromised. It became evident that neither party could have its way regarding the size of the minimum tracts to be sold. Finally a compromise was proposed to the effect that in alternate townships the land should be divided into sections of one mile square—640 acres—and in these townships the land would be sold by sections. Half the townships, therefore, would be offered as a whole, and these would appeal to New England settlers, while in the other half it would be possible for a purchaser to select his 640 acres without waiting for the surrounding land to be sold, but his tract must be bounded by sectional lines. The New Englanders were sincere in their loyalty to the system of "township planting," for they had proven its value as they pushed out into the wilderness,

and surely the unsettled conditions north of the Ohio at that time made compact settlements desirable. But the Southerners grasped better the spirit of the westward movement, and in insisting upon the sale of small tracts they pointed out the development of the land system for the next fifty years.

Other amendments reduced the size of the townships to six miles square and struck out the reservation of a section in each township for the support of religion. The manner in which the latter amendment was made is worth noting, because it shows so clearly one of the great defects of the government under the Articles of Confederation. The question was put, Shall the words stand? Five States favored retention, two opposed, two were divided, and three were not sufficiently represented to cast a vote. As seven states did not support the motion, it was lost, and the words stricken out, although seventeen of the members present favored and only six opposed. If the question had been put in a different way: Shall the words be stricken out? it could not have carried.

On the 20th of May the Land Ordinance of 1785[38] was finally passed, and in final form its provisions were substantially as follows: The territory ceded by the States was to be disposed of as soon as the Indian title was purchased—the formation of States was no longer a prerequisite. The land was to be surveyed into townships of six miles

[38] See Appendix II.

square, subdivided into lots[39] of one mile square. The first lines north and south, and east and west, were to commence on the Ohio River at the Pennsylvania border, and only the township lines were to be actually surveyed. The townships were to be sold alternately as a whole and by lots. The sales were to take place in the States. As soon as seven ranges[40] were surveyed the townships were to be drawn by lot, one-seventh of the entire amount for the claims of the Continental army, and the balance was to be drawn and distributed among the States "according to the quotas in the last preceding requisition," to be sold by the commissioners of the loan-offices therein at public auction. A minimum price of one dollar[41] per acre was established, which might be paid in specie, loan-office certificates reduced to specie, or certificates of the liquidated debt, including interest; but the expenses of surveying, estimated at $36.00 per township, must also be paid by the purchaser at the time of sale. The purchasers secured deeds for definite tracts of land

[39] The term "section" was used in the debates on the Ordinance and in some of the motions, but it was not used in the Ordinance as passed. It first appears in the Federal land laws in the act of 1796. Professor Frederick J. Turner states "the 640 acre (or one square mile) unit of North Carolina for pre-emptions, and frontier land bounties, became the area awarded to frontier stations by Virginia in 1779, and the "'section' of the later federal land system." Proceedings of the State Historical Society of Wisconsin, 1908, p. 231.

[40] A range was a tier of townships running from south to north. The ranges were enumerated from east to west.

[41] Efforts were made to reduce the price to one-half or two-thirds of a dollar.

and not warrants permitting a future location. Congress reserved for future disposition sections 8, 11, 26, and 29 in each township, as well as one-third part of all gold, silver, lead, and copper mines, and the sixteenth lot in each township was reserved for the maintenance of public schools. The form of deeds as well as the manner of issuing them was prescribed, as well as the method of obtaining military bounty warrants,[42] a reservation of three townships was made for the lands already promised to Canadian and Nova Scotian refugees during the Revolution,[43] and three towns were reserved for the Christian Indians settled therein.

If the influence of New England upon the formation of the national land system is not already evident, it could be shown through the influence exerted by Timothy Pickering, of Massachusetts. Just before Congress took up the report of 1784, in 1785, he wrote to Gerry for information concerning the plans for disposing of the Western lands. "If they mean to permit adventurers to make a scramble for them (as has been the case in this State and Virginia) it will behoove us to engage reasonably with some enterprising but confidential character, to explore the country and make locations. But I should rather suppose that Congress would fall on a more regular plan. . . ." And he proceeded to outline a system of surveys into townships and lots, sales to be by auction and surveys

[42] See Chapter 10.

[43] See Chapter 12.

to be paid for by the purchaser.[44] Gerry replied, enclosing a draft of the report of 1784, and, as he was about to return home, asked Pickering to communicate with Rufus King. Pickering wrote to King on March 8 and criticised the report of 1784 because the surveys did not provide for the convergence of the meridians toward the north; he also held that the land should be sold at auction with a minimum price, and that salt licks and mines should be reserved.[45] He especially criticised the lack of educational and religious reserves.

When Grayson's committee reported, King sent a draft to Pickering and stated, "You will find thereby, that your ideas have had weight with the Committee who reported the ordinance."[46] Grayson wrote to Pickering on the 27th; and on May 8 King wrote that they had been forced to "give up the plan of townships as to admit the sale of one-half of the townships in lots of a mile square.[47] And on the 30th he wrote, "All parties who have advocated particular modes of disposing of this western territory have relinquished some things they wished, and the ordinance is a compromise of opinions."[48]

Thus, out of conflicting interests, through compromise and concession, arose the American land system. Refusing to try vague experiments in that valued domain, Congress adopted the system which

[44] From Phila., Mar. 1, 1785. Pickering, I, 504.
[45] Pickering, I, 506.
[46] April 15, 1785. Pickering, I, 511.
[47] 514.
[48] 516.

had proven most effective in the old States, and, refusing to sacrifice the future for a temporary gain, it preferred to postpone the land revenue rather than to make use of a dangerous expedient. For the carefully run rectangular surveys would take time and would add to the expense of the lands, whereas the system in vogue south of the Ohio provided an immediate revenue for the State but frequently left the purchaser with an accumulation of boundary disputes. New England could not carry her "township planting" unaltered into the West, and with the close of the Indian wars the system of individual settlement, encouraged by the sale of small tracts, was more desirable; but the system of prior "discriminate" surveys was hers and represents one of her great contributions to the development of the West.

The Ordinance of 1785 was the foundation of the American Land System, and its leading principles have continued in operation to this day. Too much credit cannot be given to the men who framed and adopted this measure, for, though of little immediate usefulness and later ignored for a season, it proved to be one of the wisest and most influential, if not the wisest and most influential, of all the acts of the Revolutionary period.

CHAPTER III

LAND SALES UNDER THE CONFEDERATION, 1787-1789

Now that the Land Ordinance had been passed, it remained for Congress to provide means for its execution. According to the Ordinance, the surveys, which must be made before the land could be placed on sale, were to be made by surveyors, one from each State, chosen by Congress, but all acting under the direction of the Geographer of the United States. Thomas Hutchins had been appointed one of two geographers on May 4, 1781, and after 1784 he was sole Geographer. He was a man of considerable experience, having served as a British officer for more than twenty-two years, notably in Bouquet's expedition of 1764, and in the Revolution he had been detailed to the Southern army under General Greene.[1] In 1784 he had been engaged in running the Virginia-Pennsylvania line. A week after the Ordinance was adopted, Congress continued Hutchins in his office for three years, with a salary of six dollars per day, including expenses. At the same time nine surveyors were appointed from as many States, and four others were chosen within the next two months.[2]

[1] Hutchins, 9.

[2] They were to be paid $2.00 per mile for surveys, which was to include the wages of their helpers and all other expenses. There was difficulty in filling some of these positions. Three surveyors for New Hampshire were elected in turn between May 27 and August 24, 1785.

Hutchins promptly commenced preparations for the surveys. On September 3 he met five of the surveyors at Pittsburg, where fear of the Indians kept his party until the 22d, but between that date and October 23 the surveyors ran an east-and-west line for some distance, until the Indians forced them to return.[3]

On May 9, 1786, Congress instructed the Geographer and surveyors to proceed to the execution of the Ordinance,[4] but added that they were not to survey north of the first east-and-west line, which ran from the junction of the Pennsylvania boundary and the Ohio River; and on the 12th the provision that all lines be run by the true meridian and that the variation of the magnetic needle be certified on each plat, was repealed because it would greatly delay the surveys.[5] This was the first alteration in the Ordinance, and a most unfortunate one it would have been if it had not been later amended. Late in July, Hutchins again arrived in Pittsburg and was engaged in the surveys until the first of the following February, during which time somewhat more than four ranges were surveyed, and the plats were submitted to Congress on April 18, 1787. The next year his appointment expired, and he was reëlected for two years. In 1787 and 1788

3 Hutchins, 43. This party of surveyors was composed of Benjamin Tupper, (Mass.); William Morris, (N. Y.); Alexander Parker, (Va.); James Simpson, (Md.); Robert Johnson, (Ga.); Isaac Sherman, (Conn.); Absalom Martin, (N. J.); and Edward Dowse, (N. H.). J., IV, 700.

4 J., IV, 636.

5 J., IV, 637.

he was engaged on two surveys, one of the Massachusetts-New York line,[6] and the other of the line between these States and the public lands, so that it was not until the fall of 1788 that he could return to the land surveys. While on duty there he was taken ill and died at Pittsburg, April 28, 1789.[7] The surveys of the "seven ranges" were later completed, and in 1800-1801 the ranges were extended on the north to the southern boundary of the Connecticut reserve.

The surveys had taken longer than had been expected when the system had been adopted and no land could be sold until seven ranges had been completed. The hostile Indians who prevented the surveys also would have checked any extensive settlement, so it is doubtful if the delay in placing the land on the market worked any hardship. But it is easy to understand how Southern members could become out of patience with what seemed to them a very slow system, and ready to support any plan of alteration. In 1786 two efforts were made to amend the Ordinance, but without success. As Grayson wrote to Madison, "An attempt was made to change the system altogether, and was negatived. Indeed, the Eastern and some other States are so much attached to it that I am afraid no material alteration can be effected."[8] And twice in 1787 were attempts made by Southern members

[6] In western New York, Massachusetts owned the land, and New York held the sovereignity.

[7] Hutchins, 48.

[8] May 28, 1786. Ban., I, 508.

to introduce "indiscriminate locations" in the unsurveyed area, but New England and some of the Middle States stood firm.[9] The struggle for prior discriminate surveys was by no means finished in 1785; it had to be fought out year after year for ten years before it was decisively won.

As soon as the plats of the four ranges were laid before Congress it was decided to proceed with the sale of these lands rather than wait for the seven ranges specified in the Ordinance, and, in asking the Board of Treasury to report a plan of sale, it showed that it considered the method outlined there unsatisfactory even before it had been tried. Acting on the report of the Board, it abolished the system of sales in the thirteen States[10] and provided that after the land was drawn for the soldiers the sales would take place at the seat of Congress.[11] Another alteration marked the first step in the process which fastened the giving of credit upon the land system, until it was finally rooted out by strenuous measures in 1820. Under the Ordinance the land purchased must be paid for at the time of sale or the lands be resold, but by the amendment of 1787 one-third of the purchase money must be paid immediately and the balance within three months. Failure to pay the balance caused a forfeiture of the first payment.

Under these provisions, between September 21 and October 9, 1787, some 108,431 acres were sold

[9] Cutler, I, 126; Madison Writing, II, 356; Ban., II, 438.
[10] April 21, 1787. J., IV, 739. [11] New York.

at auction in New York, for $176,090.[12] Of these, 35,457 acres, purchased for $88,764, were later forfeited, incurring a loss of $29,782.[13] So actually only 72,974 acres were sold, and $117,108 received in public securities. No entire townships were sold.

Among the explanations advanced for these small sales, two deserve consideration. In the first place, the sale of large tracts of land to companies had commenced, and this withdrew many possible bidders from the public sales, and, in addition, the threatening state of Indian affairs northwest of the Ohio deterred individual investors. Although by the second treaty of Fort Stanwix, on October 22, 1784, the United States had secured a cession of the claims of the Six Nations to territory north of the Ohio, yet the local tribes refused to be bound by the action of their former overlords. On the 21st of January following, a treaty signed at Fort McIntosh with the Wyandots, Delawares, Chippewas, and Ottawas, marked out certain lands for their use and vested the title to the other lands in

[12] P. L., III, 459.

[13] These purchasers tried for many years to secure some compensation for the amount which they had forfeited. Petitions were presented to Congress in 1799 and in 1823. In the latter memorial the claimants dwelt upon the reasonableness of their request because the land sold for more later, and because they were unable to complete the payments as they were building a ship for the China trade from which the United States received more than $200,000 in revenue. In 1828, when relief measures were the order of the day, an act provided that certificates receivable for public lands should be issued for all sums forfeited through failure to complete payments. See P. L., III, 613.

the United States. But this treaty, as well as that of 1786 with the Shawnees, was not respected by the various tribes of the Northwest, and so the Indian title was still in dispute. The frontiersmen of Pennsylvania, Virginia, and the Kentucky country might cross the Ohio and take up a claim by "tomahawk right,"[14] but the Eastern settler was not ready to invest his money in so dubious a venture, and the New England people who were ready to emigrate were being interested in a New England enterprise, the "Ohio Company."

In order to drive out the unauthorized settlers who were locating on the public lands and jeopardizing the peace of the frontier, Congress twice, in 1787, instructed the military to move against them, and on October 3 resolved to station seven hundred troops on the frontier "to protect the settlers on the public lands from the depredations of the Indians; to facilitate the surveying and selling of the said lands, in order to reduce the public debt and to prevent all unwarrantable intrusions thereon."[15] Under these instructions a detachment of troops moved down the right bank of the Ohio, driving out the settlers and burning their log cabins, but they generally returned as soon as it was safe.[16] At this time troops were stationed at the following frontier forts: Forts Franklin, Pitt, and McIntosh, in Pennsylvania; Fort Harmar, at the mouth of the Muskingum; Fort Steuben, at

[14] Used to denote a claim marked out with blazed trees.

[15] J., IV, 785. [16] Cutler, I, 133.

the Rapids of the Ohio, and Post Vincennes, on the Wabash.[17]

The last changes in the Ordinance of 1785 were made on October 22, 1787, when two military reserves were set apart for the satisfaction of bounty warrants in lieu of the method provided in the Ordinance,[18] and on July 7, 1788, when a supplement to the Ordinance was passed which contained the amendments of 1787 as to the sale of the land, but further amended it to permit of sales at New York or Philadelphia or other places as the Board of Treasury might direct, and also incorporated the change in the method of satisfying the military bounties.[19] In fact, all previous purchasers of land were permitted to make payment in bounty warrants up to one-seventh of the amount.[20] These were the last amendments passed by the Old Congress, and it held fast to the rectangular surveys, but by this time its interest had been diverted from the operation of the Ordinance to the sales of large tracts to companies.

The first of these sales was arranged for in July, 1787, although the contract was not signed nor the first payment made until October, after the public sale of land in the four ranges. The story of the organization of the Ohio Company can only be outlined here.[21] The founders, Generals Rufus Put-

[17] J., IV, 875.

[18] J., IV, 832. See Chap. 10.

[19] J., IV, 832.

[20] No purchasers availed themselves of this provision. The two land companies already had received this privilege.

[21] See: Cutler, I, Chapters 5-8; McMaster, I, 505-515.

nam and Benjamin Tupper, had signed the soldiers' petition of 1785. Tupper had helped survey the four ranges and the information gained at that time led to the issuing of a call for residents of Massachusetts wishing to purchase lands in the Ohio country to meet in their respective counties and send delegates to a meeting at the Bunch of Grapes Tavern, in Boston, on March 1, 1786. On March 3, Articles of Agreement were adopted and subscription books were opened for the capital stock of $1,000,000 in specie certificates. A year later the subscriptions amounted to $250,000, and a committee of three, General Samuel Holden Parsons, General Rufus Putnam and the Reverend Manasseh Cutler, were appointed to make application to Congress for a private purchase of lands. The memorial, submitted by Parsons, was referred by Congress to a committee, which reported on July 14, 1787.[22]

Under ordinary circumstances such a proposal would doubtless have been rejected, for it called for the virtual suspension of the Land Ordinance even before it had been tried; it sought the corporate ownership of an immense area instead of the small holdings encouraged by the Ordinance; and by offering fifty cents an acre it would impair the approaching sale of the four ranges. But these were no ordinary times. The finances of the Confederation were in a wretched state, Shay's Rebellion had just been suppressed, but its bitterness

[22] J., IV, 755.

still lingered, and the Federal Convention had already assembled in Philadelphia for the purpose of revising the Articles of Confederation and providing a more efficient central government. From the 12th of May to July 6 Congress met from day to day in New York without securing a quorum, due to delegates attending the Convention at Philadelphia, but on the 13th the famous Ordinance of 1787, for the government of the territory of the United States northwest of the Ohio River, was passed. On the next day the committee reported on the memorial of General Parsons.

Under these circumstances the offer of a million dollars for Western lands seemed somewhat attractive, yet the offer was not promptly accepted. The Reverend Manasseh Cutler had been selected to see the measure through Congress, and from the 6th to the 11th he labored in New York, leaving there for a visit to Philadelphia while the governmental Ordinance was under consideration. When he returned, on the 17th, he found that a strong opposition had developed, and, therefore, in order to force matters, he announced that he would give up the whole scheme and endeavor to purchase land from one of the States.[23] This had an effect on the committee, but especially on Colonel Duer, Secretary of the Treasury Board, who broached the subject of a land speculation involving "the principal characters in the city," and who believed that if Cutler would extend the contract and take in

[23] Cutler, I, 294.

another company, secretly, the grant could be secured. This advice was followed, and on the 23d Congress agreed to the sale,[24] but the terms were not considered satisfactory and it was not until Cutler had again made a feint at giving up the matter that a satisfactory arrangement was made.[25] As only eight States were represented in Congress at this time, and as seven were needed to pass the measure, it required considerable diplomacy, if nothing else, to secure a favorable consideration. Aside from the "land speculation,"[26] Cutler states that the matter was favored by his coming out for General St. Clair, then President of Congress, for Governor of the new Northwest Territory, although St. Clair's biographer questions the charge.[27] If the measure had failed, it was arranged that Sargent should go to Maryland and secure a representation favorable to the plan, while Cutler should visit Connecticut and Rhode Island, these States being at the time unrepresented in Congress.[28] There can be little doubt that the interests of the Ohio Company were well looked after by the Reverend Manasseh Cutler.

On October 27 Cutler and Sargent signed two contracts, one for the Ohio Company, and the other, an option to purchase, for the Scioto Company. The former was supposed to cover 1,500,000 acres,

[24] J., IV, App. 17. [25] J., IV, App. 18.

[26] "Without connecting this speculation similar terms and advantages could not have been obtained for the Ohio Company." Cutler, I, 305.

[27] St. Clair, I, 126. [28] Cutler, I, 303.

and the latter about 5,000,000. These tracts lay between the Seven Ranges and the Scioto and on the Ohio River. In each case the exterior lines of the survey were to be run by the United States, but the companies were to run the interior lines according to the Ordinance of 1785. In each township section sixteen was to be reserved for education, and sections eight, eleven, and twenty-six, for the future disposition of Congress, and in addition section twenty-nine was to be given perpetually for religion—this was a New England feature which had failed of passage in the Land Ordinance. An entirely new provision was the grant of two townships for a university. These large donations of land doubtless caused some of the opposition to the grant. The price of the land was that fixed in the Land Ordinance, one dollar per acre, considerably more than the company had intended to pay. As payments might be made in government paper, and as one-third of a dollar per acre was allowed for bad land and incidental charges, the nominal price was reduced to sixty-six and two-thirds cents an acre, while the actual price was only eight or nine cents, as the certificates of indebtedness were then worth only about twelve cents on the dollar. Military bounty rights could be offered up to one-seventh of the whole amount.

The first terms proposed by Congress required a payment of $500,000 with the signing of the contract and the balance when the survey of the exterior lines was completed, but Cutler and Sargent

were unwilling to have their sound Ohio Company jeopardized by the speculating Scioto Company, so they insisted that $500,000 be paid with the contract, $500,000 with the survey, and the balance in six equal payments,[29] while a deed for $1,000,000 worth of land was to pass when that amount had been paid. Other deeds were to pass as agreed upon later, while a right of entry and occupancy was allowed on part of the tract until the deed could pass. At the time it was believed that the two tracts would bring in to the treasury $2,993,-154 in certificates of indebtedness, while bounty land warrants for six or seven hundred thousand acres would be satisfied as well.[30]

The success of the Ohio Company encouraged some typical land speculators to seek Congress lands at two-thirds of a dollar an acre. John Cleve Symmes, who had represented New Jersey in Congress in 1785-9, petitioned for one million acres between the Great and Little Miami rivers, on the Ohio. He desired the same terms as those granted Cutler and Sargent, but would accept a single township for an "academy." Congress referred the petition to the Board of Treasury to "take order."[31]

In the meanwhile Royal Flint and Joseph Parker and their associates had sought two tracts,[32] one of two million acres on the Ohio, and another of one million on the Mississippi. As the Indian

[29] "Half yearly" added by Congress. [30] J., IV, 871.
[31] J., IV, App. 18. Aug. 29, 1787. [32] J., IV, App. 19.

title had not been extinguished in this region, the petitioners desired to purchase the Indian rights themselves and receive four townships of land, 92,160 acres, in full compensation. But Congress resolved, on October 22, that no land should be sold until the Indian title was extinguished by the United States,[33] and the next day passed a general resolution covering the two applications then before it, as well as others to come.[34] This authorized the Board of Treasury to contract with any persons for the sale of land which was free of Indian claims, but no tract was to be less than a million acres nor to extend more than one-third of its depth along the Ohio, Mississippi, Wabash or Illinois rivers. The terms were to be similar to those granted to Cutler and Sargent, but there were to be no donations for seminaries unless the contract called for an amount equal to their purchase, and, finally, the tract must be in a different State.

The next year George Morgan and his associates sought a tract on the Mississippi to the south of that desired by Flint and Parker. In this case, also, the Indian title had to be extinguished, but a sale was authorized,[35] the final payments not to be made until after the government had quieted the title.[36]

[33] J., IV, App. 19.

[34] J., IV, 802.

[35] June 20, 1788. J., IV, 823.

[36] Royal Flint was a prominent merchant in New York city who had served as paymaster in the Revolution. He was a leading member of the Scioto Company and was to have represented it abroad.

If these applications for about 5,000,000 acres had been carried through, it would have meant a reduction of $3,000,000 in the domestic debt, and the satisfaction of another half-million acres of military warrants. Only one, however, resulted in a sale, and on October 15, 1788, Symmes signed a contract for one million acres of land on the east side of the Great Miami. The terms were similar to those obtained by Cutler and Sargent, but no donation was made for a seminary.[37] A first payment of $82,198, one-seventh in military rights and the rest in public securities, was made; a similar amount was due within a month after the survey of the external lines; and the balance in six equal semi-annual payments. The total payment, exclusive of military rights, was estimated at $571,437.[38]

The engagements entered into by Cutler and Sargent and by Symmes, and the other large contracts pending, seemed to point to the rapid extinguishment of the domestic debt and were used as Federal arguments during the struggle for the ratification of the Constitution. The Ohio Company at once began to survey and settle its lands. In December, General Putnam led the first party to the Ohio, arriving at Fort Harmar on April 7,

His ill-health led to the appointment of Joel Barlow.—Cutler, I, 498.

Colonel George Morgan was an Indian agent of the United States during the Revolution. He was interested in the old Indiana Company and had petitioned Congress in its behalf.

[37] P. L., I, 127. [38] J., IV, 871.

1788. The city, later called Marietta, was laid out. Symmes, who had been elected one of the judges for the new territory on February 19, 1788, crossed the mountains in August, and settlers were on his tract even before his contract was signed.[39]

With the first ratifications of the new Constitution the public credit began to improve; the all but worthless securities began to rise in value, which served to increase the cost of Western lands; not only did further applications for tracts cease, but the existing contractors found themselves embarrassed by the improved credit of the nation and by the Indian wars which soon broke out. Instead of the contracts being carried out in due course and without question, they became a source of trouble under the new government, and doubtless served to render that form of disposition of the public domain undesirable. This is perhaps the best place to summarize the later history of these sales, even though the sequence of events is broken, for it was almost fifteen years after the contract with Symmes that the last legislation affecting his tract was passed.

In March, 1792, the Ohio Company presented to Congress a memorial asking relief, and General Putnam, Manasseh Cutler and Robert Oliver journeyed to Philadelphia to add their personal representations.[40] The company stated that it had already paid $500,000 for the land, equal to thirty-three and one-third cents an acre, but in the last

[39] Cutler, I, 415.

[40] Cutler, I, 471.

few years the rise in the value of securities, the suffering, distress and expense occasioned by the Indian wars,[41] the donations of land to settlers who would perform military service,[42] and the prevailing belief that Congress was about to reduce the price of Western lands, had combined to threaten the company with ruin. The external surveys had just been completed, and the second payment of half a million would soon be due. If this amount was not forthcoming, the land and all the improvements would be forfeited and the settlement broken up, for the company had received no deed as yet, nor could any pass until a million dollars had been paid. Under these circumstances, the memorial prayed that the land might be granted the company at fifty cents an acre instead of the sixty-six and two-thirds of the contract.

Congress took a broad view of the situation and at once decided that the settlement should be maintained, and that as a specific performance of the contract was beyond the means of the company, then some alteration should be made. In fact, the House Committee reported that the company had probably paid already as much as Congress would charge for Western lands in the future.[43] The relief bill was passed, after amendment in the Senate, the casting-vote of the Vice-President, Adams, being necessary to carry the donation of one hundred thousand acres.[44]

[41] $33,000.

[42] About 90,000 acres.

[43] Cutler, I, 478.

[44] Annals, 1791-3, 123.

This act of April 21, 1792,[45] authorized the President to issue letters patent to the Ohio Company for three tracts of land, one for 750,000 acres without further charge, one for 214,285 acres to be covered by military warrants, and one for 100,000 acres to be granted by the company in one-hundred-acre lots to male settlers eighteen years of age or over. It was provided that reservations for education and religion should be continued in the first tract, but nothing was said about them in the other two.[46]

The Ohio Company, therefore, received 750,000 acres in return for $500,000 in Continental securities worth about twelve and a half cents to the dollar. And for the other 214,285 acres bounty land warrants were actually presented for only 142,900 acres, or at the rate of one and one-half acres of land for each acre called for in the warrants. The one hundred thousand acre tract for donations has not generally been charged against the company, but has been considered a national grant for the encouragement of settlement on the frontier. These figures show that the Ohio Company could compete very successfully when the national lands were placed on sale at two dollars an acre. All things considered, in spite of the interference with the general disposal of lands, the sale to the Ohio Company was to be commended. It

[45] 1792, Chap. 25.

[46] The Ohio Company later petitioned for these reserves—having granted lands of their own for those purposes—but without success. P. L., I, 255.

extinguished half a million of the debt at a time when the treasury was all but bankrupt; it was a concrete example of the wealth of the Western lands; it seemed to pave the way for other remunerative sales, and, better than all this, it placed on the frontier a most desirable body of settlers, many of them veterans of the Revolution.

Cutler and Sargent also signed a contract in 1787 on behalf of the Scioto Company. The troubled history of that ill-starred speculation cannot be dwelt upon here. No formal organization was ever effected, but shares in the five-million-acre preëmption were divided among Cutler, Sargent, Duer, Tupper, Putnam, Flint, and others, and Joel Barlow was sent to Europe to dispose of the land to investors there.[47] As no payment was due Congress until the survey was run, the promoters believed that they would by that time have sufficient funds to make the successive payments and clear a neat profit, and under normal conditions they doubtless would have been successful. Barlow succeeded in selling the rights to three million acres to a company organized in Paris, but it was permitted to resell all or part of the tract, although it actually could deal in nothing but "rights." The outbreak of the French Revolution turned a royalist emigration to America, and among these unfortunates sales were rapidly effected, although the titles were bad on their very face. Several hundred emigrants

[47] See E. C. Dawes, History of the Scioto Purchase, in Cutler, I, 494-524.

sailed for America early in 1790. The difficulties of settlement in the northwest which embarrassed the Ohio Company also disorganized the less wisely managed undertaking. In October the first emigrants were settled within the Ohio Company's lands at Gallipolis, while the Indian war prevented further surveys of their tracts. The conditions on the frontier were bad enough, but the final blow fell when Duer and Flint, the leading backers of the company, failed in New York in April, 1792. Then all hope of securing title to the grant vanished. No money had been paid by the company because none was due until after the survey had been filed. The preëmption simply lapsed, and the French settlers had neither money nor land. The donation clause in the Ohio Company's bill was expected to relieve their distress, and in 1795 it was extended to them, while at the same time Congress passed a specific relief act granting 24,000 acres to the French inhabitants of Gallipolis on condition of settlement within five years and five-year residence.[48] These conditions of settlement were waived in 1806. This grant was divided into lots of two hundred and seventeen and two-fifth acres among ninety-two French settlers, while M. Gervais received four thousand acres.[49] An additional grant of twelve hundred acres was made by Congress in 1798.

In this way the great purchase of the Scioto Company, welcomed as an aid to the struggling

[48] March 3, 1795. Chap. 49. [49] Cutler, I, 523.

national credit, in which so many "of the principal characters of America" were interested, and without which the sound purchase of the Ohio Company could hardly have been effected, resulted in the duping of too guileless emigrants and in a donation of land by a sympathetic Congress from a rich domain.

The Symmes purchase caused even more extended Congressional action. Under his contract the tract would have been a long strip, twenty miles wide, running along the Great Miami, north from the Ohio. Before the survey was completed, Symmes had proceeded to grant lands along the Little Miami, beyond his limits, and Governor St. Clair had warned prospective purchasers, as well as prohibited further location upon the lands in dispute.[50] Congress, however, agreed in 1792 to have the terms of the contract altered so as to cover the land between the Great and Little Miamis,[51] and shortly after passed a relief measure similar to that for the Ohio Company.[52] This permitted Symmes to receive a patent for as much land as he had already made payments, and also allowed him to take up 106,857 acres under military rights. The act also granted to Symmes and his associates a township for an academy and other seminaries of learning, for although Symmes had sought such a grant in 1787, it had not been made because his tract was so much smaller than the Cutler-Sargent

[50] St. Clair, II, 209. [51] April 12, 1792.
[52] May 5, 1792, Chap. 30.

purchase. Letters patent, therefore, issued in 1794 for 311,682 acres, including the five reserved sections in each township and the township granted for the academy, and at the same time Symmes quit-claimed his rights to all the lands remaining in his former contract. When this patent was analyzed it appeared that, aside from the reserves, Symmes received 248,540 acres of land, and of these, 105,683 were covered by the $70,455 in public securities paid in 1788, while 142,857 acres were paid for with military warrants. In the latter case, instead of setting an acre, as called for by the military warrants, off against an acre of land, the treasury reckoned the warrants as being worth one dollar an acre and accepted them in exchange for land at two-thirds of a dollar, so that warrants for only 95,250 acres were satisfied.[53]

The patent of 1794, favorable as it was to Symmes, did not satisfy him. He soon claimed the right to complete payments on the balance of his original million-acre contract, and, while his memorials were before Congress, he proceeded to sell as much land as he could between the two Miamis. For several years Congress had to consider his claims and the claims of those who had purchased land from him beyond the limits of his patent. The question was a complicated one. In amending the terms of the original contract, Congress had assumed that one million acres were contained between the two Miamis, and Symmes claimed that

[53] See P. L., I, 75, 104, 127.

he had only quit-claimed his rights to any land in the former contract not covered by the altered bounds. But when the surveys were run it was found that only about 543,950 acres lay between the two rivers. In short, Congress took the position that Symmes had given up all claim to the land beyond the bounds of the second contract, and that he had forfeited his rights to the balance of the lands within it because of his failure to make the proper payments. But Congress was not willing to deal harshly with the innocent purchasers from Symmes. In the case of the French settlers at Gallipolis, who were in similar circumstances, Congress had made donations of land, but the purchasers from Symmes were not looked upon as objects of charity. Congress only granted them a preëmption of their lands at the minimum price of two dollars an acre, but allowed two years for the payment, instead of the one year's credit then in vogue.[54] Additional acts in 1801, 1802, 1803, and 1804, were necessary because Symmes had continued to make sales, and under these acts the credit period of four years was allowed, as under the amended general land system. For several years Symmes sought permission to carry out the terms of his original contract and to complete the payments for one million acres, but in spite of the expense and hardship incurred in founding his settlement and his later broken fortunes, Congress did not see its way to grant, as an act of grace and not

[54] March 2, 1799, Chap. 34.

of right, the privilege of buying lands at two-thirds of a dollar, which would, under the existing land system, be sold for at least two dollars an acre.

A summary of the actual workings of these sales to companies under the Confederation is of value. At the time it was expected that the two Cutler-Sargent contracts would realize three million dollars in securities and satisfy some six or seven hundred thousand acres of military bounty warrants. The Symmes purchase was estimated at $571,437 and 143,000 acres in bounties.

	Acres	Securities	Warrants (Acres)
Ohio Company	750,000	$500,000	
	214,285		142,900
	100,000	(donation)	
Scioto Company	25,200	(donation)	
Symmes	105,683	70,455	
	142,857		95,250
	1,338,025	$570,455	238,150

As commercial transactions, these sales could hardly be considered successful, but what the nation lost in money it gained in men, and the Ohio Company certainly justified its existence and served to raise the value of the public lands adjoining its frontier settlements.

One other large land sale under the Confederation should be considered here, and in this case the purchaser was one of the Confederated States. When the western boundary of New York, under the cessions of New York and Massachusetts, was

determined, it was found that a tract of some 200,000 acres lay within the public domain bounded by New York, Pennsylvania and Lake Erie. Congress decided, in 1788, to have the tract surveyed and disposed of at private sale for not less than three-fourths of a dollar the acre,[55] and Pennsylvania offered to purchase the triangle at that price, thus securing an increased frontage on Lake Erie. The offer was accepted by the Board of Treasury, and on September 4 Congress transferred the government and jurisdiction of the tract to Pennsylvania, in addition to the land.[56] The reason for this relinquishment of jurisdiction over land ceded by other States was simply because the triangle was cut off from the rest of the Northwest Territory by the Connecticut Reserve. At the time it was not expected that Connecticut would later cede the jurisdiction over her tract to the nation, therefore it was expedient to have Pennsylvania extend her government over the isolated region. New York could have secured the region had she cared to bid for it, but she already possessed a considerable strip of the lake shore. Pennsylvania paid $151,640.25 for the 202,187 acres, and the letters patent were issued in 1792.[57]

[55] June 6, J., IV, 820. [56] J., IV, 864.
[57] January 3, 1792, Chap. 4.

DISPOSAL OF PUBLIC LANDS UNDER THE CONFEDERATION

	Acres	Securities	Bounty Warrants (Acres)
1787, Sales at New York	72,974	$117,108	
Ohio Company	964,285	500,000	142,900
1788, Symmes	248,540	70,455	95,250
Pennsylvania	202,187	151,640	
	1,487,986	$839,203	238,150

MILITARY BOUNTIES.

RESERVES:

For education.
For religion.
For Christian Indians.

DONATIONS:

Settlers in Ohio Company tract.....100,000
French settlers at Gallipolis..... 25,200
Canadian refugees 58,640
French settlers at Vincennes, Kaskaskia, etc.
Arnold Henry Dohrman..... 22,400

CHAPTER IV

THE DEVELOPMENT OF THE LAND SYSTEM, 1789-1800

When the first Congress under the Constitution assembled in March, 1789, it was to be expected that some of its time would be devoted to the management of the western lands. The dissolution of the old Board of Treasury, the recent death of the Geographer, and the necessity of completing some of the surveys rendered some action desirable. Those who were most interested wondered whether Congress would simply endorse and continue the land Ordinance of 1785 as it was about to do in the case of the governmental ordinance of 1787, or whether it would further modify its provisions. As a matter of fact no general land legislation was passed until 1796, and in the meanwhile no land was offered at public sale. During those years many attempts were made to pass a land law but each time without success, and it was well that such was the case for these proposals would have established a very different system from the sound one of 1785. For this reason the deliberations of Congress between 1787 and 1796 merit careful consideration, and at times it looked as if the existing land system, with its rectangular surveys, was about to be abandoned.

The first debates in the House disclosed a desire for a new system, in spite of the fact that the existing Ordinance was based upon a compromise. Mr. Scott, of the western counties of Pennsylvania, led the movement for a new act. He took the position that Congress must act speedily in regard to the public lands. The surveys called for in the contracts with the companies must be completed, for otherwise the second payments would not be made. And he would remodel the whole system. He was opposed to the system of large sales in million acre tracts, he objected to the great cost of the surveys under the existing system, he would sell the land in small quantities and the purchasers then should pay the cost of the surveys.[1]

He further believed that a land office should be opened near the public lands where only certificates of indebtedness would be received, and he announced that it was useless to attempt to drive settlers off the lands, instead, preëmption should be granted them. Finally, he recognized that favorable measures toward the pioneers would meet with disfavor in the Eastern states because of the drain of population caused by the new settlements, but, on the other hand, if Government did not encourage an orderly settlement of these people they would surely move across the Mississippi where the

1 He stated that 20,690 "specie dollars" had been paid for 2091 miles of surveying. "Congress had better give away their lands to those who will take and settle them than pay it." Annals, 1789-90, 629.

Spanish government was offering favorable terms to settlers.

Several members took exception to some of Mr. Scott's recommendations, and Mr. Sherman, of Connecticut, took the New England position that settlements should be extended gradually, in compact bodies, that it was better to settle by townships, even giving some of the lots to settlers, and, above all, the surveys should be retained, for the lack of them would cause the choice of the best land, irregularity of settlement, disputes and eternal lawsuits. Mr. Scott replied that the township system was unnecessary and ill-adapted to the western conditions.

After further debate a committee was appointed to bring in a bill providing for the establishment of a land office, regulating the terms and manner of granting land, limiting the amount to be granted to any one person, establishing a price per acre, and granting preëmption to actual settlers.[2] Mr. Scott, as chairman of the Committee, reported such a bill, but it did not proceed beyond a second reading. No further action was taken at the first session to provide for a general sale of lands.

At the next session the land question came up during the first month in an interesting way. A certain Hannibal W. Dobbyn, of the "kingdom of Ireland," presented a petition for leave to purchase fifty thousand acres in one tract, paying one-third down, one-third in seven years, and one-third in

[2] Annals, 1789-90, 665-6.

twelve years, with interest at six per cent.[3] The House referred the memorial to a committee, whose report caused a general debate. Mr. Scott favored the petition, but it soon was evident that the House was in no mood to enter upon a land-jobbing business without careful consideration. As Mr. Boudinot, of New Jersey, said: "The business of selling lands was of considerable consequence; if it was properly managed it might be a productive source for the extinguishment of the national debt; but much depended on the manner of setting out. If they went into a desultory mode of selling lands they might do material injury. He wished a general and systematic plan might be adopted, which should not be receded from."[4] He suggested that the report be referred to the Secretary of the Treasury. Mr. Sedgwick, of Massachusetts, wished to broaden the object of the reference and request the secretary to report general regulations for the distribution of lands and he looked far into the future when he said: "He was decidedly opposed to selling lands, unless the whole of the purchase money was paid down. He would never consent to make individuals debtors to the Union, because it tended to weaken the hands of the government. If they received but one-third of the payment, he should look upon the other two-thirds as relinquished." After several other members had expressed similar views, the House voted to have the report lie upon

[3] Jan. 18, 1790. Annals, 1789-90, 1061.

[4] Annals, 1789-90, 1069.

the table, and to request the Secretary of the Treasury to prepare a uniform plan of disposal.

This was the second of the important reports which Alexander Hamilton prepared at the request of the first Congresses. His First Report on Public Credit, prepared in response to the resolution of the House of September 21, 1789, had been presented on January 14, but had not been taken up when the present reference was voted. In that report, among other proposals, he suggested the payment of the domestic debt partly in land at the rate of twenty cents an acre.[5] Hamilton now turned to this new duty and six months later presented his "Report of a Uniform System for the Disposition of the Lands, the Property of the United States."[6]

In preparing this report Hamilton proceeded as if no land system existed. He simply dismissed the Ordinance of 1785 without consideration and outlined a different system. In studying the question Hamilton found "two leading objects of consideration: one, the facility of advantageous sales, according to the probable course of purchasers; the other the accommodation of individuals now inhabiting the western country or who may hereafter emigrate thither. The former, as an operation of finance, claims primary attention." He came to the conclusion that there would be three classes of purchasers of western lands: "moneyed individuals and companies who will buy to sell again; associations of

[5] Finance, I, 15-25.

[6] P. L. I, 8. Hamilton's Works, viii, 87. Donaldson, 198.

persons who intend to make settlements themselves; single persons or families, now resident in the western country, or who may emigrate hereafter." The first two classes would want considerable tracts, while the third would desire land in small quantities. Hence three land offices should be established: a General Land Office at the seat of government, where large purchases could be made, and subordinate offices, one in the Northwest and the other in the Southwest Territory. It seemed to him desirable to have the Commissioners of the General Land Office vested with a considerable amount of discretion in order that they might take advantage of special conditions, but their conduct should be subject to some limitation, and he proceeded to outline certain regulations which would be desirable.

A study of these propositions discloses Hamilton's ideas on the land problem. He dismissed the existing system of prior surveys of ranges, townships and sections—although he believed there would be some community settlements—and advocated instead a modified system of indiscriminate locations. In other words, there should be three tracts set apart: one for subscribers to the proposed loan, and no location to be less than five hundred acres; one in which actual settlers might secure tracts, but no holding to exceed one hundred acres; and one in which land should be sold by townships of ten miles square. But "any quantities may, nevertheless, be sold by special contract, comprehended either within natural boundaries or lines, or both."

In these three tracts, and in those sold under special contract, the external lines of purchases were to be run by government surveyors, at the expense of the purchasers, but no regular system of surveys was to be established.

Sales at a fixed price were substituted for the auction system, and thirty cents an acre, in specie or stock bearing an immediate interest at six per cent., was suggested as a fair price. No credit was to be allowed for purchases of less than ten miles square, and in no case could the credit run over two years, while one quarter of the price must be paid down and some security, besides the land, advanced for the balance. This was a good business proposition, but a poor political one, for it favored the rich speculator instead of the actual settler.

Donaldson, in his "Public Domain," described the report as follows: "The extraordinary character of the above plan can now be fully seen. It forms in its several leading features the basis of the prior and existing methods of administration for the sale and disposition of the public domain. Mr. Hamilton's views upon this subject, as well as upon every question he touched relating to the organization of the Nation, displayed his matchless practical ability."[7]

A careful study of the report fails to justify this praise. Land offices were later established, but they had been suggested before this time. The provision for three tracts in which locations of different

[7] Donaldson, 200.

sizes might be made was promptly rejected, and if accepted would have been a decided retrogression if not entirely impracticable. The fixed price of thirty cents an acre was apparently too low in view of the later sales at two dollars minimum under the auction system, while the recommendation of the credit system was not a wise move, even though it did not apply to the mass of settlers. As far as the details of administration go they were but little in advance of the old Ordinance. The General Land Office was to take over the duties of the defunct Board of Treasury, the Surveyor General was to have the duties assigned to the Geographer, while the necessity of three commissioners for each of the land offices was not made clear. The Treasurer of the United States and the Secretaries of the Western governments were to be the receivers of monies.

There is but one conclusion to be drawn from this report and that is that Hamilton prepared it to meet the financial demands of the hour without a proper consideration of the future. In no other way can the substitution of indiscriminate locations, even in definite tracts, for the system of accurate surveys devised in 1785, be accounted for. The surveys, to be sure, were expensive and time was required for their execution, moreover they were opposed in certain sections, but they were the basis of an accurate and regular land system. The encouragement of purchases by speculators is also accounted for by Hamilton's interest in funding the national debt, and at that time many members

of Congress believed with him that the lands should be managed as a great source of revenue rather than solely as field for western expansion.

As the report was communicated to the House only a few weeks before the close of the session no action was taken on it at that time, but on August 4, the act making provision for the payment of the debt of the United States[8] contained a section appropriating the proceeds of all future sales of lands to the sinking fund. This was a wider application of the land revenue than Hamilton had suggested and it was frequently cited later in opposition to grants of land revenue for other purposes. Washington approved of it in his second annual message and trusted that the lands would soon be made to contribute to the reduction of the debt.

At the opening of the Third Session Hamilton's report was referred to the Committee of the Whole and a debate ensued on his recommendations. After a lengthy discussion the House agreed upon twenty four resolutions which were referred to a committee appointed to draw up a bill.[9] The questions which caused most discussion were the method of location, the method of sale, and the price.

Scott fought vigorously for the principle of indiscriminate location. "He conceived it would be the interest of Government to let every one purchase where he pleased, and as much or as little as he chose." So he attacked the recommendations of the report that certain tracts be laid off in which

8 1790, ch. 34. 9 Annals, 1790-1, pp. 1829-32.

land should be located in different quantities, as well as the provision that the actual settler should not be allowed to purchase over one hundred acres.

Although the House agreed with him in opposing the setting aside of separate tracts for different modes of location, yet he stood alone on the question of indiscriminate location. On this question the debate took the form of an "experience meeting." Williamson had seen the evil effects of it in North Carolina, choice tracts were selected by speculators and the remainder rendered unsalable. Boudinot cited the New Jersey experience: "He said more money had been spent at law, in disputes arising from that mode of settlement in New Jersey, than would have been necessary to purchase all the land of the State." Sedgwick, of Massachusetts, disliked the system: it led to speculation and monopoly.

So Scott's amendment providing for indiscriminate location was defeated, but he succeeded in carrying an amendment to place on sale the Seven Ranges provided for in 1785 instead of the proposed townships ten miles square. This enabled some land to be placed on sale at once.

Regarding the price and the method of sale there was much difference of opinion. Should there be a fixed price as proposed in the report, or should there be a minimum price established leaving the actual price to be determined by the surveyors, or, finally, should the auction system be used?

Members from Massachusetts, New Hampshire

and New York stated that their states had fixed the relative value of the lands but vested discretionary power in the surveyor or commissioner. Georgia, on the other hand, had found it a mischievous system, and most of the speakers favored a fixed price. Hamilton's estimate of thirty cents an acre was retained, although there was a difference of opinion as to this.

The resolutions as adopted by the House agreed with Hamilton's report in some respects but differed in many essentials.[10] The proposal of tracts for different forms of location was rejected. The tract for townships and the tract for actual settlers were merged in the resolution that the Seven Ranges be placed on sale, while no tract for subscribers to the proposed loan was necessary, as that form of funding the debt had been given up. There might be special sales within natural boundaries or lines, but purchasers on a navigable river must purchase a certain amount of back lands. The price was fixed at thirty cents an acre but all securities were to be received without discrimination. The twelfth resolution was new, and provided for preemption in these words: "That preference be given for a limited time to those actual settlers whose titles are not secured by the former governments of that country and the existing ordinances and acts of Congress." The General and subordinate land offices were agreed upon and a Surveyor General, who could appoint his deputies, was provided.

[10] Annals, 1790-1, p. 1841.

A bill, based on these resolutions, was presented to the House and amended so as to reduce the price to twenty-five cents "hard money." It passed and in the Senate it was referred to a committee and then postponed to the next session.

So, year after year passed and no provision was made for the sale of western lands. The nation certainly needed the revenue, and for this reason alone some action was necessary, while settlers moving into the Northwest demanded the right to purchase land. In spite of the Indian forays the settlements beyond the Ohio were rapidly increasing and the pioneers were locating either upon the tracts which had passed out of public ownership or as unauthorized settlers upon the public domain.

It was not until the first session of the Fourth Congress that a determined effort was made to provide a system of disposal for the western lands, and although the necessary resolution was presented on December 17, 1795, a very interesting event occurred before the committee reported a bill.

This event was the exposure in the House of a rather crude attempt to bribe certain members into favoring a grant of the Michigan peninsula, some twenty million acres, to a company of speculators represented by a Mr. Randall and a Mr. Whitney. The company was willing to pay half a million or even a million dollars for the grant and their services in quieting the Indians would make the grant desirable. It was a bold scheme. The property was to be divided into forty shares and twenty-four

of them were to be distributed among members of Congress. The matter came up on December 28, when Smith, of South Carolina, the chairman of the Land Office Committee, stated that he had been approached by Randall, whereupon Murray, of Maryland, Giles and Madison, of Virginia, stated that they also had been sounded. Buck, of Vermont, had been approached by Whitney at his home, while Lyman, of Massachusetts, added that the latter had discussed the plan in general terms with him.

This testimony was sufficient to cause the arrest of the bribers. Then the House had to decide upon a form of procedure in such a case, for never before had an outsider been summoned before the bar of the House. Two more members then stated that they had been approached by Randall, and, on January 6, 1796, he was declared guilty of a contempt and breach of privileges of the House in attempting to corrupt the integrity of its members. He was then called to the bar, reprimanded and committed to the custody of the Sergeant-at-Arms until further orders. Whitney escaped by a narrow margin, mainly because the offense was committed before Congress assembled. Within a week Randall petitioned for his discharge and it was granted.

This incident has been narrated because it undoubtedly caused Congress to hold fast to its position against large sales to speculators, and it seems also to have caused a greater interest in the question of the public domain than ever before.

There was another event which doubtless had even a greater effect in arousing interest in the question. For the first time since the states had ceded their western lands it seemed as if the nation could really pass a good title to purchasers. Before the United States could dispose of its waste land it must quiet the troublesome occupancy of the Indian tribes, and although the government had endeavored to do this in the Northwest it was not until the crushing victory of "Mad" Anthony Wayne, on the 20th of August, 1794, that Indian treaties in that region really meant anything.

The treaties of Fort McIntosh, in 1785, and of Ft. Harmar, in 1789, had not been generally accepted by the northwestern tribes. The next year they insisted on reëstablishing the boundary line along the Ohio, and, negotiations failing, the first of a series of expeditions was sent against them. Harmar's expedition of 1790 and St. Clair's of 1791 were disastrous failures, and in 1793 the commissioners appointed to negotiate with the hostiles met a severe rebuff. Only the Ohio as a boundary would satisfy them, and they repudiated the existing treaties as made by a few unauthorized chiefs. But Wayne's victory of the next year broke the spirit of the Indians, and a year later, August 3, 1795, by the treaty of Greeneville, some twenty-five thousand square miles were ceded to the United States, comprising the eastern and southern part of Ohio, as well as sixteen detached portions west of the line. Doubtless the knowledge that the British

were about to surrender the western posts facilitated the treaty.

Such was the condition of affairs when Congress assembled. The British posts had been given up by Jay's treaty,[11] and a rich territory was opened for settlement by the Greeneville treaty, into which pioneers were already advancing, while the airing of the bribery charges warned Congress to be cautious in its legislation.

The Land Office Committee of the House reported a bill on January 28, 1796, which was read twice and referred to the Committee of the Whole, where it was not brought up for debate until February 15. Unfortunately there is no record of this original bill although many features can be restored from the debates.

The chairman of the committee, William Smith, of South Carolina, stated that the committee had two objects in view: "to raise revenue, and to sell the land in such lots as would be most convenient to purchasers." [12] For that reason it favored townships of three miles square and rejected the auction system in favor of a fixed price of two dollars an acre.

These were the features of the report which elicited the greatest debate, and the old, old question was again threshed out: shall the system of rectangular surveys be retained or shall the prior surveys—for no one favored indiscriminate locations—take into consideration natural bounds, the

[11] Nov. 19, 1794.

[12] Annals, 1795-6, p. 331.

division of bottoms, and the laying out of land along the water courses with larger tracts attached. All the latter propositions were rejected, and the surveys were to be rectangular.

A more vigorous discussion arose as to the size of the lots. Members from the back country stood out for the sale of small tracts, even as small as fifty acres, while there were others who believed in selling large tracts to moneyed purchasers. The question was brought to an issue by the amendment of Gallatin that half the townships should be sold in large and the other half in small tracts, without specifying the respective sizes. Havens, of New York, stood out for the sale of all the land in small lots, preferably six hundred and forty acres. Although some favored his amendment yet the majority was for Gallatin's proposal, the "wholesale and retail plan." In defending his amendment Gallatin urged that large tracts should be offered so that the speculator could subdivide and sell at a long credit to poor men who could not afford to purchase directly from the government. If only small tracts were placed on sale these would be purchased here and there and so prevent a purchaser from buying a large tract. There was a pretty general agreement that both sizes of tracts were desirable.

An effort was then made to limit the amount of sales, either by extending the settlement in compact bodies or by setting a limit to the annual sales. The assigned reason was the question of defense and

government, but those who opposed believed that the Eastern states feared too great an immigration as well as that interested landholders favored the policy. This attempt to limit settlement was defeated.

The provision for a fixed price was rejected without defense while the auction system found many supporters and was continued with a minimum price of two dollars an acre. There was practically no objection to this figure, which testifies to the improved financial conditions since 1791 when twenty-five cents an acre was proposed. Even Gallatin believed the price none too high.

Further provisions were added with little debate. The large lots were to be sold at the capital and the small ones in the Western Territory. Salt springs were to be reserved, and there were to be reserves for schools and colleges.

Williams, of New York, offered an amendment which is of real interest. If it had been adopted it would have had no small effect upon the land system. For he proposed that conditions of settlement be affixed to every grant. That there be one settler on every . . . acres within . . . years from the sale thereof. This motion produced a very general debate and was supported generally by the members from the frontier, notably Gallatin and Findley, of Pennsylvania, and Rutherford, of Virginia, who had lived fifty years on the frontier. Williams agreed with them that the settlers should not be forced to improve the value of lands for non-

residents, while Rutherford pointed out that unoccupied tracts would cause a weak frontier. Gallatin held that this was the system before the Revolution "from one end of the country to the other."

The opposition came, in general, from members who favored speculative purchases. Others believed it would reduce the price of lands, and encourage emigration, to which Gallatin replied that he hoped the price of labor in the old states would be kept up thereby. Finally it was stated that such conditions in New York, Massachusetts, New Hampshire, Vermont and other states had been found ineffectual, and that Government could not enforce the condition. The amendment was rejected, although twenty-two votes were cast in its favor. This is apparently the only time that any determined attempt was made to insist upon the settlement of all land sold by the government. If it could have been enforced the measure would have been a creditable one. The actual settlers were continually complaining of the tracts retained by moneyed Easterners which increased in value only as they themselves toiled and improved the surrounding lands. They were soon able to cause Congress to abandon its reserve system but the holdings of the speculators were even a greater source of complaint. If this condition of settlement had been passed the provision for the sale of large tracts would have been worthless, and the attempt to secure two diverse ends would have been abandoned

—the welfare of the settler would have triumphed over the needs of the treasury.

Other amendments were proposed and carried, notably to extend the term of credit to three years, and then the bill was referred to a select committee consisting of the original committee with four members added.

The bill reported by the committee provided for rectangular surveys, six miles square. Half the townships were to be sold in quarter townships of three miles square, and the balance in lots of six hundred and forty acres.

In the Committee of the Whole an attempt was again made to limit the amount of land placed on sale, as well as to provide for a bond and mortgage instead of forfeiture for non-payment. A separate tract for the location of military warrants was decided upon rather than permitting them to be exchanged for land anywhere. And, finally, an amendment was carried providing for the sale of half the six hundred and forty acre lots in quarter sections of one hundred and sixty acres. This was a great concession to the actual settler, but an attempt to divide the quarter township lots into sections was lost. When the bill was debated in the House an attempt was made to increase the minimum lots to three hundred and twenty acres, but without success.

The Senate passed the bill with amendments—notably one which struck out the small lots, and an

attempt to reinsert this provision in the House was lost, thirty-three votes to thirty-one.

After further amendments the bill finally passed and President Washington approved it on May 18, 1796.

In brief, this act "providing for the sale of the lands of the United States in the territory northwest of the river Ohio, and above the mouth of the Kentucky river," [13] was much as follows: A Surveyor General was to be appointed who might engage deputies and who was to survey the land in the above district to which the Indian title had been extinguished. The lands were to be divided into townships of six miles square, one-half of which townships were to be further divided into sections of six hundred and forty acres. Reserves were to be made for the United States, namely, the salt spring near the Scioto river and the township embracing it, and every other salt spring and the section which included it, also four sections at the center of each township, except in the case of fractional townships of less than three quarters of a township. As soon as seven ranges were surveyed they were to be offered for sale, the sections at Cincinnati and Pittsburg, and the quarter townships at the seat of government. The sale was to be at public vendue and two dollars an acre was fixed as the minimum price. Provision was also made for the sale of the townships surveyed under the Ordinance

[13] 1796, ch. 29. May 18.

of 1785. As to payments, the purchaser was to deposit one-twentieth, complete one-half of the price within thirty days, or forfeit the deposit, and pay the balance within one year, but a discount of ten per cent. was offered for cash. The patent only issued when the payment was completed, and any failure in payments caused a forfeiture of the land and the deposits. Other provisions related to the administration of the system. The surveys were to be at the expense of the United States, but fees were defined for certificates and patents. A receiver of moneys was to be appointed by the President. The reserves for schools and colleges did not appear in the bill as passed.[14]

It is of interest at this time to note the development of Congressional opinion regarding the public lands between the Ordinance of 1785 and the first general land act under the new Congress. Although the members did not recognize it yet there was a marked similarity between the two acts. The rectangular surveys, the townships six miles square, the division into sections, the sale of large and small tracts, the auction system,—these fundamental provisions are all found in the Ordinance. Yet the debates between 1789 and 1796 hardly indicate that there was then in existence an ordinance for the sale of the lands of the United States. In other words, the then members of Congress based this

[14] Fees: Certificates, when one-half of purchase price was paid, for 640 acres, $6.00; for quarter township, $20.00. Patents, for 640 acres, $6.00; quarter township, $20.00.

new legislation on the experience with which they were familiar, the recent experience of New York being frequently cited, and their observations coincided with those of the members of the old Congress. The questions which divided Congress in 1785 no longer appear. In 1796 no member favored locations by the use of warrants, everyone realized the value of prior surveys. Nor did any member hold out for "township planting," even the New Englanders realized that such a system would not have general application in the West. Those members who insisted upon the sale of large tracts used different arguments from those advanced in 1785. Then, the sale of townships would encourage the settlement of bodies of emigrants who would divide their purchase into small holdings; now, large tracts were to be offered to the speculator, and although it was hoped that small holdings would result yet he would profit in the process. So in 1796 both parties to the main compromise of 1785 were pronounced in the wrong, but Congress had not seen fit to reduce the minimum tracts.

In the eleven years since the Ordinance various attempts were made to modify the system of surveys so as to take into consideration natural bounds, which would destroy the rectangular system, as well as to make more equitable distribution of the water courses and bottoms. Under an older and richer government the latter provisions would have been desirable. Congress rejected them simply because

of the expense of so careful a survey. But fifty years later the United States should have adopted such a system in the far West where water is of such tremendous importance. Congress insisted upon surveys before sales, and the cheapest and surest were the rectangular surveys of the old Ordinance.

As to the price of the waste lands the estimates ran from the one dollar minimum of 1785 to the fixed twenty-five cents proposed in 1791, and the two dollar minimum of 1796. This is not difficult to understand. The improved credit of the nation made the latter price possible, and both East and West agreed on it, the former to check emigration, and the latter to prevent engrossing. At this time the government was in competition with several of the old States. Massachusetts, Connecticut, New York, Pennsylvania, Virginia, North Carolina, and Georgia were all selling back lands at lower rates. But the sure titles and the superior fertility of the nation's lands were rapidly turning the tide of settlement to the Ohio.

The struggle to secure the sale of small tracts was still going on. Under the Ordinance half the townships were to be sold in sections, and the attempt of the Virginians to introduce three hundred and twenty acre lots was unsuccessful. In 1796 the House voted for one hundred and sixty acre lots but the more conservative Senate rejected this concession to the small purchaser. But the reasons which caused differences of opinion varied

in the two debates. In 1785 the Southerner strove for the small location in order to secure some freedom of choice for the settler. It was a struggle between the free location and "township planting" systems. In 1796 the members from the back districts favored the small lots for the sake of the penniless pioneer, but they were also opposed to the scattering of settlement. Rutherford, the member from the back counties of Virginia, who had described himself as "a mere child of nature, an inhabitant of the frontier, as untaught as an Indian," averred that the one hundred and sixty acre lot provision was the only favorable clause to real settlers in the bill. The measure was urged by members from New York, Pennsylvania, Virginia and North Carolina, and was opposed in debate by a member from each of the first three states and from Massachusetts and Maryland.

Thus throughout these debates the lines of discussion formed and reformed. Such divisions appeared as the Coast versus the Frontier, the former unwilling to encourage emigration and the advocates of the latter announcing that if the land could not be purchased on favorable terms the settlers would take it and then the old States would lose their citizens and the nation would lose its revenue as well; the friends of the moneyed purchaser versus the friends of the poor pioneer; those who would manage the lands solely with an eye to revenue versus those who considered their orderly settlement of more importance. But the lines were

no longer formed between the East and South as in 1785. It is difficult to determine how much politics entered this debate of 1796. Apparently there was little, although the report of the committee was roundly criticised by members who were criticising administration measures. But the crude political divisions of the times could not hold in the presence of the greater economic issues.

Certain omissions are noteworthy. The school and college reserves failed to carry, possibly because they were introduced in 1785 as a valuable feature of the "township planting" system. The attempt to limit the amount of land sold each year, in order to provide for a compact spread of population as well as to apply the law of supply and demand to the public lands, failed, nor would Congress insist upon conditions of settlement. And there was no provision for preëmption, although it had been favored in 1791.

A gradual advance toward the establishment of the credit system is noticeable. In 1785 immediate payment was insisted upon; in 1787 three months credit was allowed; in 1791 a credit of two years was suggested on large purchases; and in 1796 a year's credit was offered, and the end was not yet.

In brief, therefore, the Act of 1796 continued the principles of the Ordinance of 1785 in every important particular except as to the granting of credit. And in that lies the importance of the measure. The great fundamental principle of the prior rectangular surveys was so firmly established

that it could not be later overturned. Little land was disposed of under this act, but its principles governed the important amendment of 1800. The battle was won, and yet it might so easily have been lost. The desire for an immediate land revenue, the demand for untrammeled land selection, even the necessity of quickly strengthening the frontier, all might have caused the abandonment of the slow but sound system of rectangular surveys. Any interference with that principle would have meant a widespread disturbance of the orderly peopling of the great West. Too much importance can hardly be attached to the surveys of ranges, townships, sections, and lots, in extending regular settlements into the wilderness, and in establishing sound titles for all time.

Although this measure was before Congress for some four months, and two weeks elapsed between its passage and the adjournment of Congress, yet no appropriation was made to carry out the surveys provided in the act.[15] For the first time the importance of such legislation was felt, and many times later the expansion of settlement was destined to be aided or retarded by clauses in appropriation bills which might easily escape notice.

Early in January, 1797, Gallatin moved that a committee be appointed to inquire into the progress of the sales and to report any needed alteration. Through this committee there was laid before Congress a communication of Oliver Wolcott, Jr., the

[15] Mar. 3, 1797, $27,000 appropriated.

Secretary of the Treasury, to the effect that as far as the present reports went, some 49,000 acres in the Seven Ranges had been sold at Pittsburg for a total of $112,135 of which $40,617 had been received.[16] At Philadelphia the alternate townships which, under the Ordinance, were to be sold intact, had been offered in quarter townships with no bidders. And the secretary accounted, in a measure, for the poor showing. The surveys under the Ordinance only covered the external lines of the townships, the section lines were not run. This made it very difficult for the purchaser of a section to locate it, as well as for the government to compute the size of fractional townships and sections. In fact these were but roughly computed and sold at the buyer's risk. Another reason which prevented sales was the high price—two dollars an acre was too much to give for a quarter township considering the present scarcity of money.

The conclusions to be drawn from this communication were briefly, if Congress insisted upon selling land in large tracts it must either reduce the price or extend the credit, and if it desired to sell to the settler it must either reduce the price or the size of the minimum tract. Twelve hundred and eighty dollars, the minimum price for a section, was too much to expect from a pioneer.

The committee of the House only favored one of these changes and reported that the credit should be extended so that one-fifth should be paid within

[16] P. L. I., 74.

thirty days and the balance in four annual payments.[17] But the House rejected this proposal, and in opposition to the extension of credit it was said that when time for payment came not money but petitions for extending the time would come in. It would be better, it was urged, to lower the price than to extend the credit. The House also rejected the corollary of this proposition when it refused to reduce the quarter township tracts to sections. The only general legislation of this session was proposed by Gallatin and permitted certificates of the foreign debt and six per cent. stock to be received for lands at their nominal value, while other certificates should be received at approximately their market value. At the time these certificates were worth about seventy-five cents on the dollar.[18]

Two years passed before any lands were surveyed for sale under the Act of 1796. The sales of that year had been of lands surveyed in the Seven Ranges, and in 1797 the newly appointed Surveyor General and his staff had been occupied in running the Greeneville treaty line, and in laying off the military tract and the tracts granted to the Moravians.[19] In 1798 they took up the regular surveys but seven ranges had to be completed before any could be placed on sale. During these delays the Senate twice tried to amend the law of 1796, but the House, on Gallatin's advice, postponed any action until the act had been given a trial. In the

[17] P. L. I., 74.

[18] P. L. I., 183.

[19] P. L. I., 81.

meanwhile it refused to grant any petitions for the purchase of lands on terms different from those in the existing law.

In 1798 it was found that the territory Northwest of the Ohio contained more than the five thousand free male inhabitants necessary for the establishment of representative government, and the next year the first legislature met at Cincinnati. William Henry Harrison, late Secretary of the Territory, was chosen to be the first delegate to Congress, where he could sit and debate but could not vote. He was the first representative of the "public land states" to appear in Congress and he at once set about securing the much needed land legislation. His constituents wanted the right to buy land in small tracts and at local land offices; and they wanted an extension of credit and, if possible, a grant of preëmption for those who had taken up government land before it was surveyed. It was Claiborne, of Tennessee, who urged the preemption measure, and seventeen members finally voted for it. At this time half the state of Tennessee was considered public land, but it never actually came under the national land system as will be narrated elsewhere. Harrison's bill, for he was chairman of the House Committee, called for lots of three hundred and twenty acres, an attempt to reduce them to one hundred and sixty failed, and finally the "large and small" tract idea prevailed.

The Act of May 10, 1800, was the first effective land law since the Ordinance, for the Act of 1796

had not had time to be thoroughly tried. The general principles of the three acts were the same, the details were more carefully worked out in 1800.

Four land offices were to be established, at Cincinnati, Chillicothe, Marietta, and Steubenville, with a Register and Receiver for each. Lands east of the Muskingum were to be sold only in sections; west of the Muskingum and above the mouth of the Kentucky River, half in sections and half in half-sections. The auction system with the two dollar an acre minimum was retained, but after lands had been exposed to sale for three weeks they were subject to private sale. Payment could be made in specie or in certificates of the public debt. There was a return to the Ordinance in the provision that the purchaser must pay the surveying expenses, which were fixed at six dollars a section. The credit system was worked out more carefully than in 1796. Exclusive of fees and surveying expenses the purchaser deposited one twentieth of the amount of the purchase money, to be forfeited if, within forty days, an additional payment making a total of one-fourth was not made. If this sum was not paid the land would be forfeited and subject to private sale, but not for less than the price bid at the auction. The balance of the price was divided into four annual payments due respectively two, three, and four years after the sale. On these payments interest at six per cent. "from the date of sale"[20] was charged, payable as they became due, but a

[20] A Senate amendment.

discount of eight per cent. from the amount demandable was extended for prompt payments. If the final payment was not made within one year after it fell due the tract would be advertised for thirty days and sold at public sale for a price not less than the whole arrears due plus the expenses of the sale. Any surplus would be given to the original purchaser, but if a sufficient price was not bid and paid then the lands reverted to the United States and all payments were forfeited. Such were the means devised to prevent tricky manipulations of land purchases.

With the addition of the Register to the Receiver provided in the Act of 1796 we have the administrative force of the land offices as they exist to-day. Both officers were to be paid by fees, the latter receiving one per cent. of all moneys paid him, and the former one-half per cent. on moneys expressed in receipts entered by him, as well as the fees for applications and certificates.[21] Each officer was to give a bond of ten thousand dollars. Superintendents of the sales were to receive five dollars a day, these were not regular officers but the Register and

[21] The Register entered the applications for land, i. e., entries, and filed the receipts for moneys paid the Receiver. When payments were completed he would give a final certificate which entitled the holder to a patent, granted by the President and countersigned by the Secretary of State.

Fees: To Register; application, section $3.00, half section, $2.00. Certificates and receipts, each, .25; final certificates, $1.00; all copies of documents, .25; general inspection of the book of surveys, .25. To United States: Patent, section, $5.00; half section, $4.00. Cost of surveys, $6.00 a section.

either the Governor or Secretary of the Northwest Territory were to be present at all sales.

The Congressional reserves of the four center sections in each township were retained and they might be leased for seven years. But the school and college reserves were still lacking. Finally, a preëmption at the minimum price was granted to the builders of mills before the passage of the act.

The Act of 1800 remained the model for acts regulating the disposal of lands down to 1820. According to its title it was an act to amend the Act of 1796, and such was the case, but both acts applied only to land in the Northwest and above the mouth of the Kentucky River. Although more carefully worked out than the previous act it contained only modifications of that former legislation. The principles of the American land system had been threshed out in the earlier debates. If the Congress of 1796 had sought accuracy it would have entitled its act an amendment of the great Ordinance of 1785. There is not a single feature of the Act of 1800 which did not develop out of the earlier legislation or debates.

The three important developments of the Act of 1800 were: the establishment of Land Offices, the extension of credit, and the reduction of the size of tracts. But these were normal developments, they were not new features. By the Act of 1796 lands in three definite tracts were to be sold at Pittsburg or Cincinnati. Four years later four tracts were set apart and a permanent office established in each,

and these were the land offices which men who knew anything about Western lands had been striving to have established for fifteen years. The provision that land might be sold at private sale, although not found in any previous act, was a very simple development of the auction system.[22] As to the land officers, a Receiver had been provided in 1796 and the new Registers took over the duties of the Territorial officials under that act.

The credit system had developed since 1785. The terms were carefully worked out in 1800. The four year credit, denied in 1797, was now granted.[23] All prospective land purchasers were enthusiastic over that feature. But there were men level-headed enough to prophesy the result of such an inducement to speculation or to over-extensive purchases by the actual settler.

The reduction of the size of tracts to three hundred and twenty acres, in some cases, was simply a further advance in the movement which was later to result in forty acre lots. The Congress of 1800 was not as liberal as it might have been, but the old objections to small tracts still held good.

What has been taken for an apparently new provision in the act was that which allowed a preemption to builders of mills before this time. Preemption was a subject on which opinions differed

[22] The private sale of large tracts was authorized by the Confederation and resulted in the Ohio Company and Symmes purchases. Hamilton favored private sales rather than the auction system.

[23] In 1799 a two years' credit was granted the purchasers from Symmes.

greatly at this time. In 1791 the House agreed to a resolution that preëmption be extended for a limited time to settlers in the Northwest, but in 1796 a House Committee, reporting on the claims of sundry persons to preëmption, presented an adverse report "inasmuch as illegal settlements on the lands of the United States ought not to be encouraged."[24] In 1799 Congress granted preëmption at the minimum price to persons who had contracted with Symmes for lands which did not fall within his patent. This was granted as an act of grace solely. But when Claiborne attempted to insert a general preëmption in the Act of 1800 the House rejected the proposal. The preëmption to mill owners was undoubtedly granted because of the public services rendered by these pioneers who had been forced to settle upon public lands pending the completion of the surveys.

Under the Act of 1800 land offices were opened and sales soon commenced. With the extension of the credit system and the great increase in material prosperity which marked the first years of the new century an era of westward migration, with the accompanying land sales and speculations, began, which soon caused further modifications of the land system. And these changes, important as they were, still left untouched the principle of the rectangular surveys. To follow some of the more important developments will be the purpose of the next chapter.

[24] P. L. I., 68.

SALES UNDER THE ACT OF 1796.

		Amount acres	Price	Forfeited	Receipts
1796	Pittsburg.....	43,446	$99,901.59	$525.94	$100,427.53
	Philadelphia...	5,120	10,280		10,280
		48,566	$110.181.59	$525.94	$110,707.53

CHAPTER V

THE ABOLITION OF THE CREDIT SYSTEM

The land act of 1800 was passed by a Congress in which the Federalists were in a decided majority. One year later a new administration controlled the government, an administration whose support had largely come from the back-woods districts of the old states, and whose principles were to win approval in the states yet to be born. Albert Gallatin, formerly the leader of the opposition in the House and a man who spoke authoritatively on questions of the public lands, now entered the Cabinet as Secretary of the Treasury. For the first time the executive power over the public lands was placed in the hands of a man who really appreciated the possibilities and the difficulties of the administration of such a system. Liberal and sympathetic recommendations could be expected from this Secretary of the Treasury, and they should receive thoughtful consideration by this Democratic Congress.

About a year was allowed for the surveys and new divisions under the Act of 1800, and sales were not to commence until April, 1801.[1] The principal

[1] Land previously offered at auction was placed on private sale in July, 1800, at Steubenville and Marietta. No public land was open to sale south of the Ohio.

features of the system existing at that date were as follows: A purchaser desiring land east of the Muskingum, could secure nothing smaller than a section; west of the river he might purchase a half section in one of the alternate townships which were so divided. If he desired a smaller tract he would turn to the great holdings which did not come under the Federal system, and in the Ohio Company's purchase, in Symmes' tract, in the Virginia or the National military district, or in the Connecticut Reserve, he could probably secure the amount of land he desired and on more reasonable terms. But if he preferred the terms and the good title of the government he would attend the public sale, which lasted for three weeks at the three western offices. These sales did not over-lap, so that a purchaser could move from one to the other. The lands in the Steubenville district had already been offered at auction and so were now exposed to private sale.

If a person paid cash for the land the eight per cent. discount reduced the price to one dollar and eighty-four cents an acre. And this was further reduced if he chose to pay in certificates for they were worth at that time about seventy-five cents on the dollar. On the other hand, interest at six per cent. from the date of sale was charged on all balances, while the eight per cent. discount was allowed on any of these payments which might be forestalled. A person purchasing a half section at the minimum price would owe the United States six

hundred and forty dollars. If he paid cash on the day of sale this would be reduced to $588.93,[2] plus a two dollar fee to the Register for the application, and another of one dollar for the final certificate of payment, while three dollars must be paid for surveying expenses, and a patent fee of four dollars paid to the government. If, on the other hand, he desired to take advantage of the credit system, he would pay the fees for the survey and the application as well as one-twentieth of the price (thirty-two dollars) on the day of the sale. Within forty days he must pay the balance of the first quarter, one hundred and twenty-eight dollars in the case assumed, and then secure a certificate from the Register at a cost of twenty-five cents. The second quarter was due at the end of two years from the date of sale, but to this was added six per cent. interest, making a total of $179.20, and the interest ran on the third and fourth payments also, from the date of sale. Any prepayment would secure a discount of eight per cent. from the sum due on the day which was anticipated. A fee of twenty-five cents must be paid to the Register for every receipt. Hence such a purchaser, making every payment when due, would, at the end of four years, have paid $726.40 to the United States for his half section, in addition to various fees amounting to eleven dollars. The interest charges might continue for

[2] Determined by reckoning the future payments at six per cent. interest, and deducting eight per cent. per annum for the amount forestalled.

one year after the date of the final payment, but if the tract was not completely paid for at that time it would revert to the United States. Of course the specie value of these payments would be reduced if they were made in evidences of the public debt, the value of which varied from time to time.

Such a system was bound to be disastrous. With the second payment not due for two years the settler was encouraged to purchase just as much land as he could possibly cover on the first payment, hoping that he might be able to earn enough within the first credit period to meet the subsequent payments, or perhaps expecting that the rush of westward migration would increase the price of his tract so that he might sell a portion for enough to complete his own balance. "In spite of his rude, gross nature, this early Western man was an idealist withal. He dreamed dreams and beheld visions."[3] And one of the most alluring of his dreams generally involved him in some speculation in the public lands. As long as crops were good and prices high, as long as population increased normally and the country was prosperous, just so long would the credit system prove of service in developing the West, but the conditions which were essential to its success were by no means permanent. And without them the system could be of greater danger than it had ever been of service.

The first sales under the new act were the private ones at Steubenville and Marietta, commenc-

[3] Prof. F. J. Turner, in Atlantic, Sept., 1896.

ing on July 1, 1800. These were followed by the auctions in April, May and June, 1801, at Cincinnati, Chillicothe, and Marietta. By November 1, 1801, the sales had amounted to 398,466 acres,[4] purchased at $834,887, of which amount $586,426 remained due. The system was in operation.

In this chapter it will only be possible to discuss changes in the general system, in succeeding chapters the development of each of the special forms of disposition will be described. And a few general statements may prove of service here.

The period from 1800 to 1820 was one of increasing westward migration, especially so after the War of 1812. The population of Ohio, for example, increased from 43,365 in 1800, to 581,295 two decades later, and the other states of the Northwest showed even a greater proportional growth. In the Southwest the Mississippi Territory with 8,850 inhabitants in 1800, numbered 303,349 in the states of Mississippi and Alabama in 1820. Kentucky doubled and Tennesssee quadrupled her numbers in the period.

These facts are well known. Their interest here lies in connection with the public domain. An increase in western population must mean an increase in the demand for land, but the relation of cause and effect is not as absolute as might be imagined.

First of all, Kentucky was never a part of the public domain, and although Tennessee was nominally included its soil was so covered with North

[4] Fin. I, 715.

Carolina warrants that no land was ever sold there under the Federal system. And in the other regions north and south of the Ohio the settlers were not in every case locating upon government land. In Ohio several large tracts had passed out of the domain, or had never formed part of it, while in the southwest there were titles based upon the grants of Spain, Britain and France.

Other factors, therefore, entered into the land sales. First, chronologically, would come the treaty with the Indians. In the period under discussion sixty-one treaties of varying importance were signed, and they covered the cession of most of the Indian lands east of the Mississippi.[5] In the thirties most of the Southern Indians finally were removed from Alabama and Mississippi. After the acquirement of the Indian title the land was ready for surveying, which must precede all sales. A large appropriation of funds for surveys meant the rapid preparation of wild lands for open sale, while a delay in the surveys meant that "squatters" would locate upon the land they desired, frequently preceding the surveyors by several years. Between 1787 and 1819 the expenditures for surveys amounted to $1,585,223, and half of the total was spent in the last four years.[6] Only once before 1816 did the annual expenditure reach $100,000. With the land surveyed the sales could commence, and these were in turn affected by certain abnormal conditions.

[5] Bureau of Ethnology, 18th Report. 1897. [6] P. L. III, 459.

Indian wars north and south and the War of 1812 forced back settlement and decreased sales. Good crops and high prices caused expansion and speculation. And especially disturbing was the flood of paper money which deluged the Mississippi Valley after the War of 1812. The cheap money encouraged widespread land speculation and caused the final downfall of the credit system. This was especially true in the southwest where the rush for cotton lands in Alabama led to the wildest kind of bidding at the Huntsville land office.

With these facts in mind it will be easier to follow the changes in the general system of disposition during the period.

A first modification of the credit system was incorporated in the Act of March 3, 1801.[7] This was a special act designed to afford relief to persons who had purchased lands from Symmes which did not lie within his patent. It extended the preëmption rights granted by the Act of 1799,[8] and as that act foreshadowed an extension of the period of credit, so this act outlined a further change in general legislation.

This change was to the effect that no interest would hereafter be charged on deferred payments until they became due. Such a provision reduced all interest charges, but also reduced the cash price per acre to one dollar and sixty-four

[7] Ch. 23.

[8] See page 62.

cents,[9] twenty less than under the regular system. The importance of this reduction was at once evident and measures were taken to have it incorporated in the general system. At the next session of Congress a petition was presented from the inhabitants of Fairchild County, Ohio, praying for a remission of interest and for a general revision of the land laws.[10] This petition was denied, but toward the close of the session a further relaxation of the interest provisions was made in the case of John James Dufour, and his associates, who were permitted to enter not more than four sections of land, between the Great Miami and the Indian boundary line, at two dollars the acre, payable, without interest, on or before January 1st, 1814.[11] Payments might be made in specie or in certificates, and six per cent. discount was allowed for prompt payments. These favorable terms were granted in order "to encourage the introduction, and to promote the culture of the vine," but such liberal terms, preëmption and remission of interest, were to be demanded by settlers generally.

The day before the act offering these favorable terms to the vinedressers was signed, another act of a more general nature had received the President's approval. This was the Ohio enabling act,[12] and it is of interest in the present connection because of the three propositions which were offered

[9] As the six per cent. interest charges were not included in the sum on which the eight per cent. discount was allowed.

[10] Annals, 1801-2, 508. [11] May 1, 1802. [12] Apr. 30, 1802, ch. 40.

Ohio on condition of her consenting to exempt all lands sold by the United States from State, county, and township taxes for five years after the day of sale. An account of this legislation is given elsewhere. Ohio altered the propositions, but agreed to the exemption on November 29, 1802, and on March 3, 1803, the modified propositions were stated by the United States. As finally adopted, the considerations offered Ohio for the exemption of these lands for five years were: practically one-thirty-sixth of all the lands in the State for the use of schools; certain salt springs and the adjacent sections; and the establishment of a fund consisting of five per cent. of the net proceeds of all lands sold within the State after June 30, 1802—this was subdivided into a three per cent. fund to be expended by the legislature on roads within the State, and a two per cent. fund to be used by Congress for roads to Ohio. Out of the proceeds of the latter the old National Road from Cumberland, Maryland, to the Ohio River at Wheeling, was commenced in 1806.

The object of the agreement between the United States and Ohio was the protection of the purchasers of lands from the United States. The State could not tax the lands of the United States, nor could she levy higher taxes on non-resident proprietors than on residents. This was forbidden by the fourth article of compact in the Ordinance of 1787. But the taxation of lands in process of sale by the United States and before the patent

had passed would cause difficulties. The State could not sell for taxes the property of a delinquent who had not yet secured his patent. This would be selling the land of the United States, for it had not received the entire purchase price.[13] But if this method of distress were not allowed the State would have trouble collecting its taxes from persons who were paying for their lands under the credit system. So it seemed desirable to secure a general exemption from taxation for all purchasers of the national lands for the term of five years, the general period of credit for lands. Gallatin's proposal of February 13, 1802, suggested a greater concession to the purchasers. It called for an exemption for ten years after the completion of payment to the United States, but it also doubled the fund for roads. The House passed a bill modeled on these recommendations, but the Senate amended it.

The propositions in this enabling act became models for those of later public land States. The exemption from taxation was a real inducement to purchasers of lands from the United States. The States soon began to complain that they were losing more in taxes than they gained by the land grants, and after the abolition of the credit system a determined effort was made by the States to rid themselves of this restriction on their taxing power.

Up to this time no provision had been made for the sale of lands south of the Ohio. Most of the

[13] Annals, 1801-2, 1100.

land in the North Carolina cession was covered with warrants issued by that State, but to the south of Tennessee there was a vast amount of land in the old territory of Mississippi and in the tract more recently ceded by Georgia, which would soon be overrun by settlers if some provision was not made for its survey and sale.

At the opening of the second session of the Seventh Congress petitions were presented from Mississippi Territory praying for a land office and for preëmption to actual settlers.[14] On the last day of the session an act was passed[15] for the purpose of quieting the claims based upon British or Spanish grants and to provide for the survey and sale of the ungranted lands. Among other provisions were these, which are of especial importance in the present study: a donation of not more than six hundred and forty acres was provided for those who had settled before the Spanish troops finally evacuated the territory in 1797, provided they did not claim other land under British or Spanish grant;[16] a preëmption was offered to settlers at the date of the passing of the act, but no interest was to be charged upon payments until they became due; all unappropriated lands, to which the Indian title had been extinguished, were to be surveyed into half-section lots, and, with the exception of the school reserves, were to be sold on the

[14] Annals, 1801-02, 277, 422. [15] Mar. 3, 1803, ch. 27.

[16] Note donations to French inhabitants in the Northwest. Chap. IX.

same terms as lands north of the Ohio, but evidences of the public debt were not to be received; and, finally, two land offices were to be established in the territory.

This Act is typical of the development of land legislation. Sections and half-sections were offered at the auctions in the Northwest; only half-sections in the Southwest. A general preëmption was granted there; it had been denied in the other case. Certificates of the public debt might be received for lands north of the Ohio; not so in Mississippi. Interest was not computed until the payment was due, in the case of persons granted preëmption in both regions. The delay in completing the Georgia cession, which was not ratified by the State Legislature until June 16, 1802, caused this delay in extending the national land system over the region south of Tennessee. The land officers found there a trying confusion of British and Spanish grants, Yazoo frauds, and donation and preëmption claims.

At the first session of the Eighth Congress a rather determined effort was made to alter the general land system, which had now been in operation less than three years. Both Houses appointed committees to inquire into the expediency of altering the land laws. The Senate committee had a distinctly favorable composition, Ohio, the only public land State, being represented by Senator Worthington.

The campaign on the part of the land purchasers

was opened by a very respectful petition from certain residents and purchasers in Ohio, presented to the House on December 23, 1803.[17] The improvements suggested by the petitioners were not radical and the tone of the document was in marked contrast to many which later were submitted to Congress. They approved highly of the system of surveys, but recommended that the size of the tracts be reduced, suggesting one-sixth of a section as a proper tract, that is, one hundred and six and two-thirds acres. The reasons for this change were that the tracts were too large for the general purchaser, while the speculator could retard the development of the country through the holding of large tracts. Further recommendations were that interest be charged from the expiration of the credit period rather than from the date of sale; that the reserved sections be sold as soon as possible; that fractional sections be sold individually, whereas by attaching them to adjoining sections tracts of more than two thousand acres had been offered; and, finally, that entry and patent fees be abolished and that patents be obtained from the Registers, rather than from the seat of government.

Such was the petition from the purchasers. There was no demand for preëmption, no cry that the credit system be abolished. It was the representation of the men who had purchased their land, and frequently the interests of the men who had

[17] P. L. I., 163. Others received before this time, but not printed.

purchased and of those about to do so were conflicting.

On the other hand, the House received a number of petitions from settlers in the Mississippi territory, which tended to show that there would be a great increase in the population of that territory if Congress would make donations to actual settlers. The House committee did not dispute the statement, but reported adversely because such bounties had been uniformly refused by the United States.[18]

Other petitions had been presented even before those which have been noted, and, with them in mind, the House committee turned to Albert Gallatin, Secretary of the Treasury, for suggestions based upon his official experience with the land laws.[19] The committee submitted certain propositions to Gallatin, and as they were based upon several petitions from persons residing in Ohio they deserve some attention as typifying Western sentiment:

"Will the sales of the lands be retarded or accelerated; and how will the revenue be affected?

"1st. By selling the lands in smaller tracts.

"2dly. By charging no interest on the amount of sales until after the purchaser has made default in payment.

"3dly. By selling for cash, instead of giving the credit now authorized by law.

"4thly. By reducing the price of the lands.

[18] P. L. I, 181. [19] P. L. I, 182.

"5thly. By making grants of small tracts to actual settlers and improvers."

These proposals, not one of them new, are striking when presented in a group at this time. Every one of the provisions became a part of the land laws, but half a century elapsed before the last proposition was passed into general legislation.

Gallatin used the propositions as a text, and replied in a letter which showed a splendid grasp of the whole situation. It might be compared with Hamilton's report of 1790, but the comparison must be very carefully made. Hamilton was asked to outline a land system. Gallatin was requested to point out defects in the existing one. Hamilton erred in rejecting a really valuable system because it had not been effectively executed, and his own recommendations were apparently based upon the immediate needs of his department, rather than upon a consideration of the future development of the West. Gallatin, with longer and more intimate experience, took a stand which was highly commendable. He saw the dangers which surrounded the present system, and every one of his recommendations was in line with future development. His letter deserved the most serious consideration by Congress, and throughout the next sixteen years its prophetic utterance could have been studied with profit.

In brief, he endorsed[20] a reduction in size, reduction in price, and abolition of credit. He arrived

[20] Jan. 2, 1804. P. L. I., 183.

at these conclusions from the following facts. He pointed out the different sizes of the tracts offered north of the Ohio, as well as the different regulations regarding the computation of interest charges —the cash price for lands being therefore either $1.84 or $1.64 per acre. The high minimum price was established, he stated, in order to prevent engrossing and also to secure a permanent revenue. Both objects had been secured, but at the time these acts were passed the value of certificates of indebtedness would have reduced the real cash price to about $1.50. And the present sales were being made in competition with sales in the Connecticut Reserve, in the Military tracts, and in Kentucky.

So a reduction in price was desirable, yet it must not be a considerable reduction. That would injure former purchasers, and encourage speculators. But to reduce the price to what may be considered as "the market price which actual settlers give for small tracts in similar situations" would not promote migrations nor speculations on a large scale, and would satisfy the demand for land created by the existing population, as well as increase the revenue.

This reduction in price must, however, be coupled with the abolition of credit. In three years more than nine hundred thousand acres had been sold, for which eight hundred thousand dollars had been received, yet almost eleven hundred thousand dollars remained due from the pur-

chasers. "Great difficulties," he continued, "may attend the recovery of that debt, which is due by nearly two thousand individuals; and its daily increase may ultimately create an interest hostile to the general welfare of the Union."

In order that the cash system might be generally available there should be a reduction in the size of tracts. The land now offered in whole sections should be offered in half-sections, and the present half-section tracts in quarter-sections, with a minimum price of $1.25 an acre for the whole and half-section tracts, and $1.50 for the quarter-sections. Such a system, he believed, would work for the benefit of both the purchaser and the government. It would mean the transfer of more land for the same amount of money, but the revenue would be sure and easily collectible.

As to the other points suggested by the committee, he believed that, in order to remove any ground of complaint from the old purchasers, interest on their installments should not be computed until they became due, but only in the case of those whose previous payments had been made on time, and who had not alienated their property. Purchasers who had already made payments of interest should receive certificates for the same, payable in land.

On the subject of preëmption Gallatin expressed the current opinion: "It is believed that the alterations which have been suggested will enable a great portion of the actual settlers to become pur-

chasers; but the principle of granting them a right of preëmption, exclusively (*sic*) of the abuses to which it is liable, appears irreconcilable with the idea of drawing a revenue from the sale of lands."

Certain minor regulations were also proposed. The powers of the Surveyor-General should be extended to the lands as far west as the Mississippi; district surveyors should be appointed, to be paid by fees, for making resurveys and for completing lines now left open; all fees except for surveys should be incorporated in the price of the lands; in place of fees there should be a salary and an increased commission for the Receivers and Registers; and the expediency of excluding the sections formerly reserved for Congress from sale was pronounced doubtful. Gallatin closed his observations by stating that they were to apply only to land north of the Ohio, as many of these regulations could not be well applied south of Tennessee. In other words, he felt that the different conditions rendered a general system of disposal inexpedient.

The House committee, of which Nicholson, of Maryland, was chairman, presented on January 23 a series of resolutions which included every one of Gallatin's recommendations, although there were certain details to be filled in later.[21]

The issue was, therefore, clearly presented in 1804. The Secretary of the Treasury and a committee of the House had come out squarely and asserted that the existing system of disposal was

[21] P. L. I., 182.

bad and should be promptly altered. But there is no record of any debate on these proposed alterations. It is evident that these recommendations were eminently proper, and yet it is just as evident why they could not be carried into legislation. Every purchaser and speculator was opposed to the abolition of the credit system, while the old States were generally opposed to any reduction in price or in size of tracts. And yet in good times the indebtedness had grown to threatening proportions—what would happen under less prosperous conditions? Gallatin's letter and the resolutions of this committee must be classed, unfortunately, among the recommendations which are made in advance of their time.

Although the abolition of credit and the reduction in price were not accepted at this time, several of the other recommendations were incorporated in the Act making provision for the disposal of lands in the Indiana Territory.[22] Among these were the following: All public lands, north or south of the Ohio, were to be offered in quarter-sections; the powers of the Surveyor-General were extended over the lands, north of the Ohio, to the Mississippi River; deputy surveyors were to be appointed to run the minor lines; interest was not to be charged until after a payment was due, but the failure to pay promptly caused the interest to be computed from the day of sale; all fees were abolished, except certain postage charges on sending the final

[22] March 26, 1804, ch. 35.

certificate to Washington and receiving the patent;[23] and the Registers and Receivers were allowed an additional commission of one-half per cent. of all moneys paid for lands sold in their offices, as well as a salary of five hundred dollars.[24]

These provisions were among those reported by the committee. Other portions of the Act may be noted. Land offices were to be established at Detroit, Vincennes, and Kaskaskia, the public sales to be announced by proclamation of the President. A form of procedure was outlined for claimants under French or British grants, and the Registers and Receivers were to act as commissioners within their respective districts. The sixteenth section in every township was reserved for schools, and an entire township in each district for a seminary. The salt springs and adjacent lands were to be reserved, and the Congressional reserves under the acts of 1785, 1796, and 1800 were to be sold.[25] Persons who had received a preëmption in Symmes' tract were allowed a further time for payment. Fractional sections might be sold singly or by uniting two or more, and, finally, preëmption was extended to three persons, one of them the proprietor of a mill dam.

The Indiana Act of 1804, in spite of its local character, contained several provisions of general application. Most important of these was the

[23] Survey fees were charged only for dividing half-section lots.

[24] The salaries at Marietta were to be $200.00.

[25] The upset price raised to $8.00 in 1805, and reduced to $4.00 in 1808.

clause permitting the sale of quarter-section tracts. This was in line with the demands of Western Congressmen and settlers from the earliest period. The question had been raised and discussed time and again. Its incorporation in the present bill was probably due directly to the recommendation of Gallatin and the House committee, but it was in keeping with the general development of the land system. Another provision of general application was that which authorized the computation of interest only after a payment was due. This had been foreshadowed by the preëmption clauses in the acts of 1801 and 1803. Of course it materially reduced the charges of the purchaser who availed himself of the credit system, but in the case of the man who could pay cash the price was reduced from $1.84 to $1.64 an acre, a very considerable reduction. The sale of fractional sections singly or by uniting two or more, the abolition of fees, the provision for deputy surveyors, and the new compensation for Registers and Receivers, were all general provisions. With this act the questionable practice of reserving three sections in each township "for the future disposition of Congress" was abandoned.

With the passage of this act it was possible for a settler to secure a tract of public land for the sum of $262.40, provided he was able to secure the quarter-section at the minimum price or purchased it at private sale, and in either case paid cash. But there were still surveying fees to be met, based

upon the amount of work to be performed by the deputy surveyors.

On the same day that the Indiana Act extended the land system to the Mississippi River in the Northwest, the President approved the first act dealing with the land in the newly acquired Louisiana country. The treaty of cession had been signed on April 30, 1803, the Senate advised ratification on October 19, and a temporary government was provided by act of October 31. On December 20 Governor Claiborne, of Mississippi Territory, and General Wilkinson, the Commissioners appointed by President Jefferson for the purpose, received the province from M. Laussat, the French Commissioner. By this acquisition some 875,025 square miles were added to the territories of the United States, but not all of it to the public domain, for the United States agreed to protect the property rights of the inhabitants.

The Act of October 31, 1803, which went into operation on the cession, had vested extraordinary powers in the President and merely substituted his appointees for the late officials, so measures were promptly taken to draw up a more elaborate form of government; moreover, the reports[26] which were received of the conduct of Spanish officials and American adventurers in Louisiana in the period between the news of the cession and the actual transfer of jurisdiction, caused Congress to take a decided stand in defense of the national domain.

[26] P. L. I., 187.

The only features of the "Act for erecting Louisiana into two Territories, and providing for the temporary government thereof,"[27] which concern this discussion, are those which deal with the lands within the region. The political and constitutional features can be passed by. As the bill passed the Senate on February 18, 1804, it contained a provision prohibiting unauthorized settlements in Louisiana and providing fine and imprisonment for the settling or surveying of lands there. The President was authorized to employ the military to remove such intruders. An attempt was made in the House to strike out this clause, without success.[28]

If certain members of the House opposed the penalties for unauthorized settlement on the lands of the United States in Louisiana, there were others who believed the Senate bill entirely too mild, and it was Mr. Rhea, of Tennessee, who offered an amendment which would render null and void all grants and attempts to secure grants of land which, at the date of the treaty of St. Ildefonso,[29] were in the crown or government of Spain. Now, the treaty of St. Ildefonso had been signed on October 1, 1800, the actual retrocession to France did not take place until November 30, 1803, and twenty days later France turned over the province to our commissioners. This amendment was a vigorous attempt to block the devices

[27] March 26, 1804, ch. 38. [28] Annals, 1803-4, 1185.
[29] Between Spain and France.

of French, Spanish, and American land-grabbers, but it was bound to work hardship upon legitimate settlers who had entered Louisiana during those three years. The amendment was promptly attacked, and a variety of reasons advanced against it. It would nullify the grants of France, and surely France was qualified to make grants during the period; such a law would be judicial rather than legislative, for the courts should pass on the validity of the grants; and such hasty legislation would cast suspicion upon the Spanish government. But the effective reply was simply this: We know that fraudulent grants have been made, and this act will prove a warning to second purchasers. Between the day on which the Senate passed the bill and the date of this debate President Jefferson had submitted to Congress further information regarding the antedated grants of lands in Louisiana,[30] and, in connection with the earlier information, Congress was warranted in keeping on its guard. Rhea's amendment was carried in the House, but the Senate promptly struck out this provision by the decisive vote of 27-1. The House refused to recede on this section by the close vote of 46-45. As the result of a conference the section was adopted with two provisos added which protected the actual settlers either in grants secured or proceedings leading to a grant, provided they were agreeable to the laws, usages, and customs of the Spanish government. These grants were not to

[30] P. L. I., 193.

exceed one mile square of land, with such additional amount as had been allowed for the wife and family of the settler.[31]

The act as passed was more just than the original House provision, but it still was unjust, because there were many bona fide grants, made before the news of the treaty of St. Ildefonso reached Louisiana, which would not be protected. In the endeavor to strike the land-grabbers some innocent grantees were sure to suffer. But this act is of further significance. No donations or preëmptions were offered. Instead, the prospective squatter was met by the rigid penalties imposed for unauthorized settling. The act, therefore, was more unyielding than any of the former acts relating to acquired territory, but later legislation provided the preëmptions and donations which were at this time denied. The next year an act[32] made the first provision for the determination and confirmation of French and Spanish grants in Louisiana, but it is of especial importance in this connection because it extended the American land surveys over the acquired region, supplanting the systems of Spain and France. The powers of the Surveyor of Public Lands, south of Tennessee, was extended over the territory of Orleans, and the surveys were to be the same "as nearly as the nature of the country will admit" as those northwest of the Ohio.

[31] See description of Louisiana communicated with Jefferson's message of Nov. 14, 1803. Annals, 1804-5, 1498.

[32] March 2, 1805, ch. 26.

In order to handle the growing business in connection with the public lands, the House of Representatives decided upon the appointment of a standing committee in December, 1805. Before that time select committees had been appointed in each House to consider various land questions as they might arise. It was not until December, 1816, that the Senate provided for a standing committee, and at that session the House added the Committee on Private Land Claims.

This first Committee on the Public Lands took a high stand against the credit system, yet was forced to see its recommendations rejected. Two strong reports, hostile to the system, were presented at this session. One was submitted by John Randolph, from the Committee of Ways and Means, on March 22, 1806, "that the public lands form a great and increasing source of revenue, although the money accruing from their sale cannot be considered in the nature of a tax. Your committee can discover no principle that will justify the extension of a further credit to purchasers who have received a fair equivalent (rapidly increasing in value) for the sums which they have stipulated to pay, that would not more forcibly warrant a similar extension of credit on custom-house bonds, and other debts due to the public; and they dread (if the present wise and salutary provisions relating to the sale of public lands be once relaxed) lest that important branch of our public resources

should be altogether dried up and lost."[33] Randolph held to the Revolutionary theory that the lands should be considered a vast source of revenue, and from that point of view any extension of the credit system was bad business.

The second report was from the Committee on Public Lands. On March 26, 1806, it had been directed to inquire into the expediency of repealing the credit provisions of the land acts, and its report was submitted April 3.[34]

This report exhibited the following facts:

Balance due from purchasers in Ohio, exclusive of interest.

On October 1, 1803	$1,092,390
On October 1, 1804	1,434,212
On October 1, 1805	2,094,305

The debt had nearly doubled in the course of the last two years.

On January 1, 1806, there was due $229,000 on account of purchases made before January 1, 1802. This amount must be paid during the year, or the land be forfeited. And it was due from three hundred and nine persons. No sales or reversions under forfeitures had up to that time taken place, but some must certainly occur if the law was to be rigidly enforced, and these penalties would not be satisfactory. Few persons would dare to bid against their unfortunate neighbors, and if the

[33] P. L. I., 284. [34] P. L. I., 286.

lands reverted to the government the tenant would remain as an encumbrance, who would have to be evicted before another sale could take place. "It might be added, that few strangers would run the risk of bidding for property at a vendue, when the united interest of the whole neighborhood was opposed to the sale." [35]

A letter from Gallatin accompanied the report, in which he restated his opinions of 1804. He feared the extension of the debtor class might create "in that section of the Union, a powerful interest, hostile to the Federal government, and which would endanger both the outstanding debt and the lands unsold." If the present system was to be continued, he held that it must be more rigidly enforced.

So the committee recommended the repeal of all credit provisions.

Two years before, a committee of the House had made a similar report, and the House had declined to act; now, in the face of the growing indebtedness, Congress either should have abolished the credit system or else should have insisted upon its rigid enforcement. But Congress did neither. Its action was so carefully concealed that it has escaped

[35] From 1801 to 1806 the only forfeiture liable was one-twentieth of the purchase price, after that date some of the purchasers were forfeiting one-fourth of the price and sometimes more. The one-twentieth was the deposit paid on the day of sale, the one-fourth within forty days, but the latter, and all subsequent payments, were not considered forfeited until one year after the day when the last installment fell due.

the attention of many students of the subject. The act was entitled "an Act to suspend the sale of certain lands in the state of Ohio and the Indiana territory,"[36] and it provided for the suspension of the sixth condition of the fifth section of the Act of 1800, chapter 55, in favor of purchasers who were actually resident at the time of the passage of this act. It really should have been entitled "an Act to extend the credit on lands purchased in Ohio," for such was its object. It postponed all forfeitures, in the case of actual settlers, until October first, next.

Such was the first of the "relief acts" which were caused by the credit system. Twelve were passed before it fell in 1820, and after that date about as many more were needed to extricate the settlers and speculators who had been entangled in its meshes.

It is very difficult to view with patience this first relief act. Congress had twice been warned by Gallatin and by the House committees against the dangers of the credit system, and yet it not only retained the source of evils, but introduced a further complicating element, the extension of credit and the suspension of forfeitures.

Under the circumstances the credit system was a vicious one. A strong government, able and willing to enforce its penalties, might well dispose of the public domain in limited tracts under such a system. But the dangers were too great for the

[36] April 15, 1806, ch. 28.

United States at that time. The rapid increase of the debtor class in the Western regions would be followed by the exertion of a strong political influence in Congress, and laws, unjust to faithful purchasers, might be expected. And with this increase in the debtors would come the time when the government could not carry out its forfeitures. The influence of the community in the execution of the land laws must be noted. It was the community which made it unwise for a man to purchase the forfeited improvements of an older settler or to bid in the improvements of the squatter. Before a single forfeiture had been made, the House committee pointed out the difficulties which would be met in an endeavor to enforce the penalties of the credit system. Moreover, it fostered land speculations and led to the evils of absenteeism. "Good times" were essential for its successful operation, but Indian raids, poor crops, a deranged currency, or, as happened, war itself, would throw it into confusion and drag the dreaming speculator down with the unfortunate settler.

Yet Congress would neither abolish this system nor would it even insist upon its rigid operation. And the reasons are not difficult to find. Every person who hoped to purchase Western lands, whether as a settler or as a speculator, insisted upon the retention of the system. And in the presence of these practical demands the warnings of Gallatin were powerless.

For the next fourteen years the story of the de-

velopment of the general land system is concerned with the struggle over this question of credit. Practically no changes were made in the general law during that period. After April 30, 1806, no new purchaser could pay for his land in certificates of the public debt, and after 1807 provision was several times made for settlers to become tenants at will of vacant lands before they were placed on sale by the United States, but aside from these changes the land laws of 1800 and 1804 remained in operation throughout the period and were gradually extended over the public domain.

During these years Congress perfected its legislation regarding foreign titles and military bounties, grants for education were increased and applications for land for internal improvements were considered, while futile attempts were made to secure a general donation or preëmption for actual settlers. All these questions are discussed in other chapters. It seems advisable here to center attention on the growth and abolition of the credit system as the most important question of general interest during the next fifteen years.

About this time the operations of the land system became involved in the general confusion which marked the approach of the second war with England. The West had shared in the general prosperity occasioned by the growth of commerce during the Napoleonic wars. Money was easy and speculation was rife. But, on December 22, 1807, the embargo was passed as a culmination to Jef-

ferson's policy of "peaceful coercion" and the West suffered with the rest of the nation.

Petitions came out of the West praying for some relief because, owing to the embargo and the suspension of commerce and the "stay laws" in the old States, many persons were threatened with a forfeiture of their lands. The credit system, so dangerous to purchasers in good times, now threatened to crush them utterly.

Jeremiah Morrow, of Ohio, one of the sanest men who ever handled land legislation, was chairman of the House Committee on Public Lands. In his report of January 19, 1809, he recommended an extension of credit because of the unfortunate financial conditions, but coupled this relief with recommendations for the abolition of the credit system and a reduction of the price of lands.[37]

But the House was not ready to follow the lead of Morrow, and preferred instead the Senate bill extending the time for making payments.

This was the first general extension of credit.[38] It applied to all purchasers, save those who had secured a preëmption, whose lands had not already been resold by the United States or reverted for non-payment, and the time for whose last payment might expire before January first. Such persons were allowed two years for the payment of the residue of the principal due. This extension was to commence one year from the day on which the last

[37] P. L. I., 909. A similar resolution was introduced by Boyle of Kentucky, on January 4. [38] Mar. 2, 1809, ch. 26.

payment was due, or, in other words, at the end of the one year's grace allowed under the law of 1800. But all arrears of interest must be paid on the day the extension was to commence, and the residue of the principal, with interest, must be paid in two equal annual payments. Failure to pay arrears of interest, or the accruing interest on the last two payments, would cause a forfeiture.

This act applied to purchasers before January 1, 1805, the only ones then subject to forfeiture of their lands, and as Congress had repealed the embargo on March 1, it possibly thought that the need of relief would vanish with one of the occasions for it. It had established, however, in the case of certain purchasers of the public lands, a credit period of seven years. Naturally all other purchasers were going to demand the same consideration.

At the next session the Ohio Legislature petitioned for an extension of the credit period, and Congress passed the desired act. As previously, the measure was introduced in the Senate, where it was spoken of as a bill granting preëmption. There was some debate on the measure in the House, but no new facts were presented.[39] There were members who feared the growth of this debtor class, there were others who favored the present system, but hoped that cash sales would soon be established, while others defended the credit system as essential to purchases of land by the poor. But

[39] Annals, 1809-10, 1999.

the measure passed principally because of the effects of the commercial restrictions and because the act simply extended the favor conferred upon others at the last session.

This Act of 1810[40] applied to purchasers of six hundred and forty acres, or less, before January 1, 1806, but was limited to persons who had actually inhabited and cultivated any one tract for one year within five years of the date of purchase. This provision was designed to prevent speculators from securing the benefits of the act. And a further favor was extended to small purchasers by the provision that lands, less than six hundred and forty acres, which might have reverted since January 1, last, might be reëntered by the original purchasers with a credit of all former payments and the benefits of the present extension of time.[41] The reentry must be made before June 1, and the land must not previously have been resold by the government.

No relief act was passed at the session of 1810-1811, although the legislatures of Ohio and Indiana Territory sought such action. They desired a remission of interest as well as an extension of time; the General Assembly of Ohio, for example, suggesting that citizens about to lose their lands might have the following relief:[42] If they had paid one installment they might relinquish it and

[40] April 30, 1810, ch. 36.

[41] The act of 1809 did not prevent forfeitures between January 1st and April 30, 1810.

[42] P. L. II., 252.

enter the land at the original terms; if they had paid two or more they might lose the first and credit the balance on the new entry. But these provisions were only to extend to purchasers of one section or less.

At the following session two committees reported on the credit system. Morrow, for the House committee, was opposed to any remission of interest or to any permanent extension of the credit, although on account of the Indian wars and the low price of produce he believed that an extension of one year on purchases in the Northwest due before December 22, 1812, might be granted.[43] Worthington, for the Senate committee, recommended the sale of eighty-acre tracts, a reduction in price to one dollar an acre, a discontinuance of credit, and an extension of credit to the present delinquents.[44]

Once more Congress refused to follow the advice of its committees and passed a relief act instead. This applied only to purchasers of lands northwest of the Ohio, holding six hundred and forty acres or less, secured before April 1, 1808.[45] They were allowed three years from January 1, 1813, and the balance was to be paid in four annual payments, commencing on that date. But before the end of the session a supplementary act[46] applied the extension to assignees of purchasers, if actual resi-

[43] P. L. II., 256. Harrison's Tippecanoe campaign.

[44] P. L. II., 439. The actual forfeitures to September 30, 1811, amounted to $98,579.

[45] April 25, 1812, ch. 77.

[46] July 6, 1812, ch. 134.

dents, and provided for the reëntry of lands reverting between April 1 and August 1 of that year. The extension of credit had now been increased to three years.[47]

It was at this session that a General Land Office was at last established.[48] A Commissioner was appointed who took over the executive duties of the Secretary of the Treasury in regard to the public lands. He became custodian of the books, plats, and other records at Washington, and through his office the patents were issued. From this date until 1849 the General Land Office was a bureau of the Treasury Department, when it was transferred to the newly created Department of the Interior. The early advocates of a General Land Office had in mind a convenient central bureau for the sale of lands, but as established the office had nothing to do with the actual disposal of the lands. It was a central executive and administrative bureau.

If the commercial restrictions and the Indian wars made relief measures necessary, the actual outbreak of war with Great Britain rendered them even more justifiable. The frontiers were ravaged and many of the settlers, who otherwise would have been endeavoring to meet their annual installments, were in the army, while the deranged condition of commerce and trade and the currency

[47] The first three year extension was the act of April 10, 1812, which allowed that privilege on the lands of soldiers who had been killed or wounded in the Wabash Campaign of November, 1811. Two weeks later similar terms were granted all delinquent settlers in the Northwest, as above. [48] April 25, 1812, ch. 68.

made the credit system more burdensome than ever.

In December, 1812, Morrow returned to his old plan, to abolish credit, sell eighty-acre tracts, and fix one dollar and twenty-five cents the acre as the minimum price, but yet give two years' grace on payments due on January 1, 1814.[49] But Congress simply passed a relief act,[50] now in general terms, giving a three-year extension of credit to purchasers prior to April 1, 1809, on tracts of a section or less. The next year similar legislation favored purchasers before April 1, 1810.[51]

With the close of the War of 1812 came financial disorders and a period of wild-cat banking in which enormous speculations took place.[52] The amount of money due the United States for land was reaching a scandalous figure for those days. The system was undeniably bad, yet Congress seemed unwilling to abandon it.

In 1815 the usual extension was granted. The next year the extension was only offered to settlers in Mississippi Territory for a period of two years and eight months, and they were permitted to enter reverted lands. In 1817 no extension was granted, but the next year an extension of one year was granted on tracts under six hundred and forty acres. In 1819 and 1820 similar acts were passed, the period of forfeiture being finally suspended until March 31, 1821.

49 P. L. II., 730. 50 March 3, 1813, ch. 43. 51 Feb. 19, 1814, ch. 14.
52 Emerick, The Credit System and the Public Domain, 6.

A very slight step toward a cash system, and one that had been urged for some time, was the Act of 1817, which permitted the sale of six sections in each township in quarter-sections or half-quarter-sections.[53] For the first time land could be offered in eighty-acre lots. To be sure, nothing was said about the credit system in this act, but a poor man could now purchase less land and owe less money, and every attack on that system was based on a reduction in size and in price. Both Jared Mansfield, the Surveyor-General, and Josiah Meigs,[54] the Commissioner of the General Land Office, opposed the division into eighty-acre lots, the one on the ground of the expense of the surveys, for even the quarter-sections were not then surveyed, and the other because he believed it would be possible for shrewd speculators and others to select the best land in small tracts and have the use of the less desirable land round about. As Meigs said: "I presume the object of the committee is to accommodate poor persons; I am apprehensive that no accommodation will be produced, but, on the contrary, they will become a prey to speculators. At present a man who has eighty dollars can have from the public a farm of one hundred and sixty acres for five years; if he cannot then pay the balance he has not paid a heavy rent; if he has improved his farm, and it sells for more than is due to the United States, he receives the surplus

[53] Feb. 22, 1817, ch. 15. The sections were numbers 2, 5, 20, 23, 30, 33.

[54] P. L. III., 277.

money; if he has not improved it so much as to make it sell, it reverts to the United States, and he may for eighty dollars take it for five years longer."

In 1819 Morrow, who had represented Ohio in the Senate since 1813, and who had been chairman of the Senate Committee on Public Lands since its establishment in 1816, made another effort to wipe out the credit system. He presented a bill for cash sales, at a dollar and a half minimum, and eighty-acre tracts.[55] Various attempts were made to amend the bill in the Senate, without success, and the bill passed, only to be laid on the table in the House.

That some action was absolutely necessary was evident from the fact that on September 30, 1819, the sum of $22,000,657 was reported due the United States from land purchasers, while a total of $412,678 had been forfeited to the nation during the existence of the credit system.[56] The question was brought before the Senate on a resolution of Mr. Leake, of Mississippi, followed by a bill from the Committee on Public Lands. A general debate followed. Walker, of Alabama, offered an amendment that purchasers of land before the bill went into operation should have the privilege of relinquishing the land for resale, the government to return to the purchaser all the land brought

[55] Annals, 1818-19, 241. P. L. III., 413.

[56] P. L. III., 460. There were balances unpaid on lands purchased in Ohio twenty years ago. Annals, 1819-20, 444.

over the then minimum price, but not more than the purchaser had already paid to the United States. Such a provision was greatly desired in Alabama, where, during the days of wild-cat banking, cotton lands had been bought at enormous prices. But this amendment would have permitted the person who relinquished the land to buy it in at the resale, which would mean practically at the minimum price, for no one would dare bid against a person seeking to repurchase his improvements. Some of the Western senators favored Walker's amendment, but it was defeated, 8-29. Edwards, of Illinois, presented an amendment designed to benefit the squatter, for it would have given an actual settler on land already offered for sale a preemption and right to purchase under the existing system up to one hundred and sixty acres. This would have resulted in a mongrel system, part cash and part credit. Edwards' amendment was defeated, although seven senators from public land States favored it. After Johnson, of Louisiana, had suggested a sort of graduation in price, the bill passed the Senate, the vote standing thirty-one to seven.[57]

In the House the same desire to keep the bill free from minor amendments was evident, and after a general debate it was passed, one hundred and thirty-three to twenty-three.

The act which James Monroe signed on April 24, 1820,[58] was the most important piece of land

[57] Annals, 1819-20, 444-489. [58] Ch. 51.

legislation since the Congress of the Confederation laid down the principles of the American land system in 1785. It was a short act, having only six sections, yet its effects were far-reaching. Its terms provided for the abolition of credit and the establishment of cash sales after July 1, 1820, for the sale of eighty-acre tracts, and for the reduction of the minimum price to one dollar and twenty-five cents an acre.

This act freed the future purchaser from the evils of the credit system. A payment of one hundred dollars made him the possessor of a tract of eighty acres. Under the old system he would have been tempted to pay eighty dollars as the first quarterly payment on a quarter-section tract, now no inducement was offered him to discount the future, to buy more land than he could later pay for, and the speculator found his dreams curtailed as well.

The establishment of cash sales and a low minimum was but a return to the system of the Ordinance of 1785. But the latter act had offered sections as the smallest available tracts. If the land system had developed toward a reduction in the size of the tracts and toward concessions in favor of the actual settler, a great amount of bad business and cheap politics might have been saved. But, instead, the desire for a land revenue caused the price to be increased and then the credit system to be developed in order to facilitate the sales. The result was that on January 1, 1820, the total land

sales were estimated at $44,563,254, and of this sum $21,799,562 were due from the purchasers.[59] Sixteen years before, when the debt was only a little over a million dollars, Gallatin had pointed out the dangers and urged the abolition of the credit system, and year after year similar warnings had been voiced, notably those of Morrow, who retired from the Senate the year before the system was finally abolished. While Congress hesitated the debt grew, and the system lent itself to the mad speculations of the wild-cat banking days. Now that future sales were to be for cash only, the next duty of Congress was to extricate the debtors who still struggled under their increasing burdens.

[59] Fin. III., 561.

ACTS EXTENDING THE CREDIT PERIOD.

Year.	Purchasers before	Payment due	Forfeitures extended to	Remarks.
1806	1801	1806	Oct. 1, 1806.	Actual settlers. Ohio, Ind.
1809	Jan. 1, 1805.	Jan. 1, 1810.	Jan. 1, 1812.	640 acres only.
1810	Jan. 1, 1806.	Jan. 1, 1811.	Jan. 1, 1813.	Actual settlers, 640 acres.
1812			3 years.	Soldiers in Wabash campaign.
1812	Apr. 1, 1808.	Apr. 1, 1813.	Jan. 1, 1816.	N. W. of Ohio. 640 settlers.
1812				Extends to assignees.
1813	Apr., 1809.	Apr., 1814.	Apr. 1, 1817.	640 acres.
1814	Apr., 1810	Apr., 1815.	Apr. 1, 1818.	640 acres.
1815	Apr. 1, 1810 to Apr. 1, 1811.	Apr., 1816.	June 1, 1819.	640 acres.
1816	Apr. 1, 1811 to June 18, 1812.	June 18, 1817.	2 years, 8 mos.	640 acres, Miss. Terr. only.
*1818			Mar. 31, 1819.	640 acres.
*1819			Mar. 31, 1820.	640 acres.
*1820			Mar. 31, 1821.	640 acres.

* Worded like the act of 1806, without the condition regarding actual settlement.

It should be remembered that when the credit period was extended for two or three years the balance of the principal due was divided into two or three equal annual payments, and failure to meet these promptly, with interest, caused a forfeiture.

CHAPTER VI

CONGRESS AND THE LAND DEBTORS

The land act of 1820 was, considering the period and the circumstances, a commendable piece of land legislation. Negatively it might be criticised, because it failed to grant preëmption or donations to actual settlers, but at that time the United States could not afford to engage in such philanthropic ventures. Other poorer powers had given away land with lavish hand, but no nation had ever granted it under an expensive system of accurate surveys such as that in operation in the United States. The liberal colonial grants of Britain, France and Spain were the occasion for countless lawsuits, and with such accompanying evils the United States could have given away its land. In 1820, however, the public lands were expected to bring some revenue into the treasury, but if they were given away the great costs of the surveys would be a drain upon the treasury instead. So, in spite of frequent demands for general preëmption and donations, Congress was still unready to grant them.

From a positive point of view the act has been criticised because it retained the great incentive to speculation, the auction system. If lands were to

be sold at all, there were three methods available—the auction system, sale at a fixed price, and sale at a price to be determined by local officers acquainted with the tracts offered. Theoretically the latter system should have been employed, but the expense of classification and the opportunity for fraud which was present caused it to be almost entirely ignored. A fixed price would have created even more opposition than the auction system, for it would have offered rich new land on the same terms as land which had been rejected for a score of years. Under the auction system the government received more nearly the value of new land, while old land was sold at the minimum price, and the minimum price came pretty close to being a fixed price, for the average price received seldom reached a higher figure. It was possible for men with ready money, under this system, to secure the desirable tracts, but as Senator Morrow reported in 1819, "The idea of providing equal facility to the poor and to the rich by any regulation is incompatible with that of disposing of the land for a valuable consideration." [1] So, if the land were to be sold at all, the auction system was apparently the best way to dispose of it.

But if the Act of 1820 provided a better way for disposing of the public domain in the future, it did not afford relief to the purchasers under the old system. Attempts had been made to add relief provisions to the bill, but they were defeated in

[1] P. L. III., 414.

order not to confuse the bill with details. Before the general land act had passed, a relief bill had been carried suspending forfeitures until March 31, 1821, and with that very slight relief, for it affected but a small body of sufferers, Congress put off the evil day until the next session.

At the close of 1820 the amount due the United States from land debtors amounted to more than $21,000,000, more than one-fifth of the national debt. Much of this money was due from persons of doubtful financial standing, while the problem was complicated by demands for equitable relief.

Congress had the difficult task before it of so legislating as to secure the largest amount of money with the smallest amount of forfeitures, for only in this way could the demands of the treasury and of the debtors be reconciled. And this was no ordinary financial transaction. Congress itself could well accept some of the responsibility for the largeness of this debt and for the distress it was causing. Congress had extended the credit period to five years, and, in spite of frequent protests, had refused to correct the error. Congress had endorsed the policy which caused commercial restrictions and finally war itself. Congress had permitted the Bank of the United States to go out of existence and the period of mushroom banks had followed. The effects upon the credit system of all these actions have already been pointed out. There was a political issue raised as well. These acts had been passed by Democratic Congresses

and their effects had been greatest in regions where Democracy was strongest. Well might a Kentucky Senator say, "The government is bound in justice to grant the relief; and these citizens have a moral right to demand it."

When Congress assembled in November, 1820, its disposition was well described by Senator Edwards, of Illinois, "All agree that relief is necessary." But the best method of relief was a perplexing question. Johnson, of Kentucky, presented to the Senate the first resolution on the subject.[2] This would have enabled a purchaser to retain as much land as his payments covered at the price contracted for and to relinquish the remainder. The desirability of some form of relinquishment was generally accepted throughout the West, and within the next three months some thirty-five petitions came up to the Senate favoring the application of previous payments at the rate of two dollars an acre and the relinquishment of the balance. The legislatures of Missouri and Kentucky passed resolutions favoring relinquishment. These proposals would have wiped out the debt at once, leaving the debtors in possession of as much land as their actual payments would cover. But the great speculations had been those of 1818 and 1819, and on these lands only one-fourth of the price had generally been paid. Johnson's resolution would have caused these purchasers to lose three-fourths of their holdings.

[2] Annals, 1820-21, p. 17.

Another plan[3] was that of Walker, of Alabama, which combined extension of credit to those who chose to retain all their lands; relinquishment of all land, resale by the government and a return to the original purchaser of the amount received above one dollar and twenty-five cents an acre, but never more than the purchaser had already paid the government; a discount of three-eighths of the original price, including interest, for prompt payments; or a relinquishment of part of the land and completion of payments on the balance. Noble, of Indiana, suggested that patents be issued to purchasers who had made three payments on their land,[4] while Ruggles, of Ohio, suggested a remission of interest and an extension of credit.[5]

The bill, which was reported to the Senate on December 28, by the Committee on Public Lands, was decidedly favorable to the debtors.[6] In brief, it provided for relinquishment, a discount for prompt payment of balances, an extension of credit on balances due, and a remission of accrued interest. The amendments of Senate and House simply made these provisions more definite.

Two valuable speeches were made during the debate in the Senate. Thomas and Edwards, Senators from Illinois, dwelt upon the economic and financial history of the past twenty years. Both pointed out the effect of reducing the minimum price of lands. Thomas showed how it would be

[3] Annals, 1820-21, p. 19.
[4] Annals, 1820-21, p. 22.
[5] P. 28.
[6] P. 133.

wiser for any purchaser who had paid but one installment to relinquish the whole tract and buy it in at the new minimum, saving at least twenty-five cents an acre thereby. Edwards maintained that the government had violated its contract with the old purchasers when it reduced the price, for, under the former system, a delinquent purchaser might forfeit his lands and, on the resale, receive the surplus over the amount due the government. But with the new minimum there would be no surplus. He failed to mention that the purchasers were begging off from *their* contract with the government. But whether based on the depreciation of the land or on the appreciation of money, he believed the discount for cash payments of balances due should be at least thirty-seven and a half per cent.[7] And he voiced the general sentiment of Congress when he said "narrow considerations of interest, nice calculations of pecuniary profit, when the great question is one of legislative grace and relief, to a considerable and suffering portion of the community, seem to me to be out of place on this floor."

Of the unsuccessful amendments which were offered during the debate, those of Eaton, of Tennessee, were perhaps the most suggestive. He first endeavored to have the relief extend solely to actual settlers—which caused Walker to ask why the government should legislate against the speculator *after* the sale when it encouraged him before

[7] Based on the decrease in the minimum price from $2.00 to $1.25 an acre.

it—and when this was defeated he tried to secure special concessions to settlers. But he obtained little support from the Senate. Walker tried to have the discount apply to the whole purchase price instead of only to the amount due, but he could not carry his amendment. After other minor changes the bill was carried, thirty-six to five being in favor of engrossing.

As might be expected, the House contained members who were ready to discriminate against the evil speculators. Allen, of Tennessee, foretold the time when persons who had completed their payments would petition Congress for a remission of such sums as would place them on an equality with those now about to be favored. "I know of no class of men who have less claim upon the paternal indulgence or gracious favor of the government than most of the purchasers of public land—I mean that portion most clamorous for relief and the most to be benefited by this bill." He did not believe that much land bought for actual cultivation would be relinquished, but the speculator, who bought some poor man's improvement over his head, would now release the adjoining tract and keep the improvement. And in another speech Allen asked the House to imagine a farmer who had been living on a plantation for three or four years without rent, unable to pay the eighty dollars a year necessary to complete title to a quarter-section tract. Under the present bill he would have the liberty of paying thirty dollars a year for eight

years without interest, which was not half the rent of a home in any country, and if he defaulted he would have had eight years' free rent. But the members of the House had no difficulty in recollecting many worthy individuals who had been unable to secure as much as eighty dollars a year from their partly tamed lands.

With various minor amendments the bill passed, ninety-seven to forty.

This act[8] became the model for the relief acts of the next ten years. In the first place it permitted the relinquishment of land not paid for and the application of the total payment to the purchase of the tract retained. But these tracts must be bounded by legal lines, eighty acres being the minimum in every case, and those who had purchased at any time two or more quarter sections could not relinquish less than one-quarter section. In no case would the government repay any money. Secondly, all interest on land debts accruing up to September 30 was remitted. Thirdly, the debtors were divided into classes, based upon the proportion of the original price which they had paid, and those who had paid one-quarter were allowed to meet the balance in eight annual payments; those who had paid one-half, in six; and those who had paid three-quarters, in four. These instalments bore six per cent. interest, which would be remitted if they were promptly paid. Fourthly, in order to encourage prompt payments a discount of thirty-

[8] Mar. 2, 1821, ch. 12.

seven and a half per cent. was allowed on the payment of the balance due before September 30, 1822, but this did not apply to the transfers under section one. Among other provisions was one relating to exploiters of town sites, another announced a forfeiture if the total debt was not paid within three months of the day fixed for final payment, while others required that a written acceptance of the terms of this act must be filed before September 30, and in the meanwhile no land was to be forfeited and no relinquished land was to be sold until two years after surrender.

Such was the act which Congress hoped would clear up the vast land debt due the government. Thomas believed that such a bill would at once reduce the debt some four million dollars through relinquishments and three millions through the payments induced by the discount, while the balance would provide a desirable annual revenue. The act was certainly liberal enough, and the strong vote it secured in each House showed how ready the whole country was to afford relief.

The immediate results of this first relief act were even greater than its friends had anticipated. By September 30, 1821, the debt had been reduced to $11,957,430, nearly fifty per cent. But Congress was not surprised to learn that further legislation was necessary. The Act of 1821 fixed September 30th as the date for accepting its provisions. In view of the transportation facilities of the time it was absurd to believe that this news could reach

and be understood by all the delinquent purchasers. So a supplementary act was passed on April 20, 1822, extending the time of acceptance until September 30th of that year, and the time of forfeiture as well. A similar extension was granted by the Act of March 3, 1823, although the applicants were required to produce evidence that their failure to act more promptly was due to causes beyond their control. These extensions, of course, did not increase the period of liquidation, they merely extended the time in which the benefits of the Act of 1821 might be accepted. It was at this session that the Legislature of Alabama sent up a memorial praying that persons who had paid for their lands before the relief laws were passed might have a discount of thirty-seven and a half per cent.[9]

After the first great reduction in the debt the annual decrease was small. Congress learned that further credit had been taken on some 3,588,558 acres upon which there was a balance of $6,740,358 due to the government.[10] This simply meant that the time for forfeitures would soon be at hand. Quite contrary to its custom, Congress proceeded to anticipate the day of reckoning and its act of 1824 gave a new stimulus to the reduction of the debt.

The benefits of this act[11] were only extended to persons who had taken a certificate of further

[9] Annals, 1822-23, 793. [10] P. L. III, 630.

[11] May 18, 1824, ch. 88. Further explained by act of May 26, 1824, ch. 176.

credit under one of the former relief acts. Such persons were permitted to relinquish part of their land and credit all payments to the tract retained, but this time the amount relinquished must either completely pay for the part retained or the balance must be paid in cash, with the customary discount of thirty-seven and a half per cent. Also, if they would make complete payment before April 10, 1825, the customary discount would be allowed.

Under this act the debt was reduced $3,906,578, amounting to $6,322,675 on June 30th, 1825.[12] Complete payment was made for 932,068 acres, by relinquishing 1,140,749 acres and paying in cash $369,589, less the discount of $222,124. The terms of this act were continued until July 4, 1827, by an act of 1826,[13] and in addition any person making complete payment before that day would secure a remission of all accrued interest as well as the discount on the principal. This act, moreover, permitted a person holding a certificate of further credit to reënter any of his lands which might have reverted for nonpayment since July 1, 1820, and to redeem them by paying the balance due, without any interest, and with a discount of thirty-seven and a half per cent. Again, in 1828,[14] the preceding acts were continued until July 4, 1829, and the right of reëntry was granted to persons who did not take out a certificate of further credit and whose lands might have been forfeited since 1820.

[12] P. L. IV., 794. [13] May 4, ch. 34.
[14] Mar. 21, 1828, ch. 22.

But in spite of these relief measures the forfeitures continued. With the great increase in the wealth of the nation Congress began to look upon the public lands less as a source of revenue and more as a great field for settlement. And when, in 1828, statistics [15] could be brought to its attention showing that since 1800 the nation had taken in forfeitures the sum of $560,000 for which the purchasers received nothing at all, and, moreover, frequently lost their improvements as well, Congress granted an unexpected relief. It simply provided that certificates, receivable for public lands in the same state or territory, should be issued for all sums forfeited since 1787, except in the case of those who took a further credit in 1821.[16] And in the case of the latter a similar relief was granted in 1832.[17]

After affording this exceptional relief Congress had to extend its benefits to other sufferers. The Act of 1830 [18] applied to the reverted lands of persons who had taken further credit. Such persons might preëmpt the forfeited land before July 4, 1831, on payment of one dollar and twenty-five cents an acre in addition to the amount already forfeited, the total payment not to exceed three dollars and fifty cents an acre; or draw scrip within nine months for money paid on lands purchased at not more than two dollars and fifty cents an acre, such scrip not to be good for lands bought after

[15] P. L. V., 12.
[16] May 23, 1828, ch. 71.
[17] July 9, 1832, ch. 181.
[18] March 31, 1830, ch. 48.

this date at public sale; or pay the balance due in cash, subject to thirty-seven and a half per cent. discount. Provision was made for preëmpting relinquished land which the person might still occupy,[19] and a stand was taken against prevalent frauds[20] in the resale of relinquished lands by providing a fine and imprisonment for attempts to hinder a person bidding at a public sale, and by rendering void all contracts to pay a premium, to the successful bidder, over the purchase price.

The next year further relief was afforded in the case of lands which sold at fourteen dollars an acre or less on which a further credit had not been taken, for such lands patents would pass if one dollar and a quarter per acre was paid before July 4, 1831.[21] This act also amended the terms on which occupants of relinquished lands might secure preemption. If the land had sold at five dollars an acre or less it might be preëmpted for one dollar and twenty-five cents an acre, while if it sold for between five and fourteen dollars the preëmption would amount to one-fourth of the purchase price per acre. Finally, in 1832, the last relief act was passed.[22] This was in the nature of an amendment to the Acts of 1824 and 1828. In the former case

[19] Preëmption at $1.25 per acre, plus 62½ per cent. of the amount formerly paid for the land and applied to complete the purchase of land retained. Total price not to exceed $3.50 an acre.

[20] For frauds see P. L. IV., 766.

[21] Feb. 25, 1831, ch. 34. This act was designed to relieve purchasers in good faith, and not the speculators of 1818-9, who had bid high for lands.

[22] July 9, 1832, ch. 181.

it provided that when land had been relinquished and the payments transferred exceeded the payment due on the lands retained then land scrip was to issue for any excess over ten dollars. And in the latter case, it authorized the issue of land-scrip for any sums forfeited on lands on which a further credit had been taken. After 1832 only the petitions of Alabama, that certificates be issued to those who purchased lands there at exorbitant prices in 1818-1819, served to remind Congress of the days of the credit system.[23]

A study of the operation of the relief laws can now be profitably undertaken. At the close of 1820 the amount due from purchasers stood at $21,213,350.[24] Of this amount more than half was due in Alabama alone, $11,206,447, while the debt in Ohio, Missouri, and Indiana ranged from two and a quarter to two and a half millions. It was in Alabama, of course, that the land speculation, under the credit system, had reached its height. The desire for new cotton lands and the abundant paper money uniting to eliminate all caution. At the Huntsville land office in 1818 and 1819 wild lands sold at auction for thirty dollars an acre, and higher prices were occasionally bid.[25] Alabama, therefore, derived the most benefit from the relief measures.

Of the four and a half million acres relinquished

[23] 1833: P. L. VI., 635. 1835: P. P. VII., 655.
[24] P. L. IV., 795. Figures vary in documents.
[25] P. L. III., 555.

under these acts, three-fourths were given up in Alabama. The relinquishments in Missouri and Illinois were proportionately very large, for there also the speculation had been excessive. In Ohio, where better financial conditions prevailed less than half the outstanding debt was met in that way. In Alabama the relinquished land had been bought at about five dollars an acre, in Missouri and Ohio at about three dollars, and in the other states at a little over two dollars.

The people of Ohio preferred to take advantage of the discount provisions of the first relief acts and in this way retained their land at prices nearly equal to the new one dollar and a quarter minimum. This would indicate that, in general, the land was desirable and had been purchased at a reasonable price in the first instance, and also that there was some ready money available to take advantage of the cash discount. But the Acts of 1830 and 1831, allowing purchasers who had taken further credit and who had been unable to hold their lands, to preëmpt the forfeited tracts at from one dollar and a quarter to three dollars and a half an acre and granting a similar preëmption to persons who still occupied relinquished lands, proved of greatest service in Alabama. There the planters in many instances had relinquished the least profitable of their lands and tried to hold, on the new credit, generally for eight years, the choicest parts of their plantations.[26] These lands had been bought at

[26] P. L. III., 630.

prices rising to thirty dollars and over an acre. Even eight years was not long enough for them to break in their new lands and meet such unreasonable prices. The lands began to revert in 1829 and under the Acts of 1830 and 1831 these lands could be preëmpted at not over three dollars and fifty cents an acre, including former payments, or at one dollar and twenty-five cents an acre if originally purchased at fourteen dollars or less. In this way a considerable quantity of high priced lands in Alabama passed into private hands at only nominal figures. The more conservative planters, who had relinquished their good lands in order to settle their entire indebtedness, must have felt rather exasperated at the success of the optimists who held on to as much as they could in the fervent hope that Congress eventually would relieve their "distress."

In view of these facts some general observations may be offered. The relief legislation, in its hesitating ineffectiveness was quite in keeping with the conduct of Congress in handling land questions. The persons who owed the government some $21,000,000 in 1820 deserved some measure of relief, that has been pointed out, and under the law the speculator was as much entitled to it as was the actual settler. A forfeiture worked a real hardship, because the unfortunate one lost not only his money and his land but his improvements as well. So long as the Congressmen were chosen by the people they could hardly be blamed for not insist-

ing upon such penalties. But Congress could have taken a middle ground between the exaction of forfeitures and the generous relief extended by the Act of 1821. It was evident to all that the existence of so large a debt was undesirable. Congress felt itself called upon to provide for the reduction of this debt in some equitable way. But instead of providing for its immediate liquidation it allowed further credit on one-third of the amount. It certainly seems as if the best act possible in 1821 would have been based upon Senator Johnson's resolution, permitting the relinquishment of enough land to complete the payment of the balance, while the discount of thirty-seven and a half per cent. for payment in full should have been allowed. This would have rendered unnecessary further relief acts of every description. Such an act was passed in 1824, but it did not prevent further legislation, for Congress was not willing to insist upon forfeitures or to profit through the resale of relinquished land. If, therefore, it was quite possible to afford relief in a business like way, it must be remembered that a number of motives caused the enactment of the first relief act.[27] The general feeling that good times were sure to come, the enthusiasm of the western Congressmen who believed that their constituents would soon be able to shake off their burdens, the general readiness to help a man get up on his feet after a financial crisis, all

27 The emphasis changes from the idea of revenue to the encouragement of settlement. First general preëmption act, 1830.

appealed to individual Congressmen. Then should be noted the change in the attitude of Congress toward the public lands and the growth of political influence in the public land states. With these suggestions in mind it is easy to understand the terms of the acts which finally rid the West of the evils of the credit system.

ACTS FOR THE EXTINGUISHMENT OF THE DEBT DUE IN 1820.

Mar. 2, 1821. Relinquishment, discount, further credit. Expired Sept. 30, 1821.

Apr. 20, 1822. Extends act of 1821 to Sept. 30, 1822.

Mar. 3, 1823. Extends act of 1821 to Sept. 30, 1823, for cause only.

May 18, 1824. Relinquishment. Discount for complete payment.

May 26, 1824. Explanatory of act of 1824.

May 4, 1826. Extends acts of 1824 to July 4, 1827. Permits re-entry of forfeited lands, on which further credit was taken, on payment of amount due less discount; remission of interest and grant of discount on all lands completely paid for.

Mar. 21, 1828. Extends acts of 1824 and 1826 to July 4, 1829. Extends re-entry to lands on which further credit was not taken and which were forfeited since July 1, 1820, and remain unsold.

May 23, 1828. Certificates to issue for all moneys forfeited on lands for which a further credit was not taken. 1787-1825.

Mar. 31, 1830. Redemption of reverted land on which a further credit had been taken: preëmption or issue of scrip. Preëmption to holders of relinquished lands.

Feb. 25, 1831. Reduction in charges of preëmption of reverted and relinquished lands.

July 9, 1832. Certificates to issue for moneys forfeited on lands on which a further credit had been taken. Certificates to issue for all sums over $10.00 due to purchasers when land was relinquished to complete payment on land retained.

CHAPTER VII

THE EXTENSION OF THE LAND SYSTEM

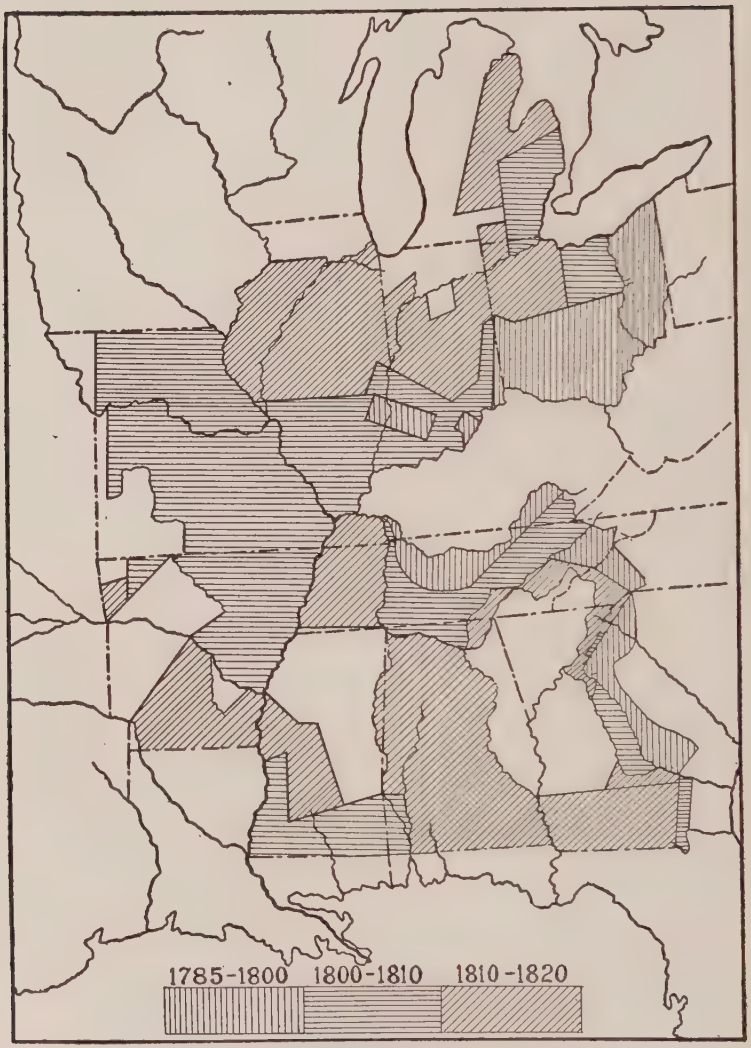
In the previous chapters the development of general land legislation has been considered and frequent references have been made to the extension of the land system over the great public domain. It now seems desirable to point out more carefully the gradual advance of the surveys and sales until they became almost coextensive with the lands. It is too frequently assumed that all the public domain was open to authorized settlement. As a matter of fact, this has never been the case. In the period under discussion, that is before 1820, three steps were necessary before any of the public domain could be purchased. First, the Indian title had to be extinguished; secondly, the surveys had to be completed; thirdly, the lands had to be declared on sale. A later development was to allow a preëmption, first on surveyed lands and finally on unsurveyed lands, but even then certain lands were closed to preëmption. To be sure settlement did not by any means wait for the extension of the land system. Where lands were held under foreign titles the period of confirmation would delay the surveys and regular sales but would permit of speculation and some increase of population. And even the most rapid surveying could not keep up with the land-hungry settlers who preferred to squat on unsurveyed land, in the hope of securing

a preëmption, rather than buy inferior land at the minimum price or pay a premium for the better land at the auction sale. The surveyors had to run their lines over good, bad and indifferent land. The squatters would locate only on the best. For that reason the surveys could not, even if money were available, keep pace with the settlers. While the linesmen were struggling through some morass or thicket the squatters were ringing trees along a likely river bottom. Therefore a map of the extension of the surveys would not agree with a map of the population of the public land states. For people would be settled on unsurveyed land and considerable surveyed land would still be unsold.

A study of the extension of the system is concerned with many details. First of all come the Indian relations which determine the cessions of land; then come the surveys, depending upon the annual appropriation and upon the pressure exerted to secure surveys in different regions; then come the establishment of the land offices, the location at times left to the choice of the President; and, finally, the sales. All must be borne in mind.

The Ordinance of 1785, the first act for the disposal of the public lands, applied to "the territory ceded by individual states to the United States, which has been purchased of the Indian inhabitans."

At that time two treaties were in existence betweeen the United States and the Indians of the Northwest. The treaty of Fort Stanwix, October



INDIAN CESSIONS

22, 1784, had simply secured a relinquishment of the title of the Six Nations to the land west of the Niagara River, but as this land was claimed by other tribes it availed little. A treaty had also been negotiated at Fort McIntosh, on January 21st, 1785, with the Wyandot, Delaware, Chippewa and Ottawa tribes, which ceded their title to approximately the southeastern half of Ohio. It was under this treaty that the first surveys were undertaken, although the treaty itself was not carried out by the Ohio tribes. Although treaties were made with the Shawnees on January 31st, 1786, and with the Wyandots, Delawares, Ottawas, Chippewas, Potawatomis, and Sauk, at Fort Harmar, on January 9th, 1789, it was not until Wayne's victory, and the treaty of Greeneville, on August 3rd, 1795, that Indian cessions in the Northwest really meant anything. This treaty covered two-thirds of the present state of Ohio, from the Pennsylvania line to the Cuyahoga River, then to the Tuscarawas and along the "Indian Boundary Line," including the entire southern half of the state, to the Indiana line, then southwest to the Ohio, opposite the mouth of the Kentucky. It was the land in this cession that was to be surveyed under the Acts of 1796 and 1800.

The survey of the first four ranges in 1785-7, then extended to seven in 1788-9, and continued to the boundary of the Connecticut Reserve in 1800-1, has been described, as have the sales in New York in 1787 and at Pittsburg in 1797. These sales were

in the Seven Ranges as surveyed before their continuation. But although so little land in the Northwest had come under the general system there was a considerable amount subject to authorized settlement. This included the Ohio Company's purchase, the Symmes purchase, the Virginia and the Continental bounty lands, the private claims at the French settlements, and certain smaller grants. In 1800 the Connecticut Reserve passed to the national jurisdiction but not to the public domain.

The Act of 1796 provided for the appointment of a Surveyor-General who should proceed to divide the lands ceded at Greeneville, but until seven ranges were surveyed no land could be sold. The only sales under this act, therefore, were of tracts in the original Seven Ranges. No appropriation for surveys was made in 1796, but in the next three years $48,519 were granted so that when the act of 1800 established land offices at Steubenville, Marietta, Chillicothe, and Cincinnati, enough land had been surveyed to permit of a commencement of the public sales in 1801. A new land office was established at Zanesville in 1803, but it was still within the Greeneville cession.

The next extension of the land system was in the Southwest. The Mississippi Territory had been erected in 1798 in spite of Georgia's pretensions, although the issue was never joined, and in 1802 the deed of cession by that State cleared the national title to the entire region south of Tennessee. But it left a tangle of Spanish and British grants,

Yazoo claims, and squatters' rights. Over the greater part of this region the Indian title was still unextinguished. In 1801 and 1802 the Choctaws had confirmed their cessions of 1765, which included a strip along the Mississippi from Vicksburg to the Louisiana line and in Alabama between the Tombigbee and Chickasawhay rivers. It was necessary, therefore, for Congress to proceed to quiet the claims of the Chickasaws, Creeks, Choctaws and Cherokees, then to confirm or reject the private land claims, to settle or repudiate the Yazoo claims and finally to make some arrangement for the settlers who had moved into the region before the lands could be placed on public sale.

The Act of 1803, therefore, extended the land system to the region south of Tennessee. It established two land offices, one for the country east, and the other for that west, of the Pearl River, Mississippi. But the officials were to be chiefly concerned with the investigation of private land claims under Spanish or British grants, and of claims of settlers in 1797 to donation lands, and of others to preemption. The Register and two other persons appointed by the President were to act as Commissioners in each district. A "surveyor of the lands of the United States, south of the State of Tennessee" was appointed, but with his deputies he was to lay off the confirmed claims and then proceed to divide the unappropriated lands, to which the Indian title was extinguished, into half

sections. Twenty thousand dollars were appropriated for these surveys and other expenses.

Under this act and its early amendments the two boards of Commissioners were occupied for several years with the various private land claims. The first land sold south of the Ohio under the regular system was in 1807 at the land offices established under the Act of 1803.[1] In 1805 the Chickasaws and Cherokees made over-lapping cessions in Tennessee and Northern Alabama; these were brought under the land system by the Act of 1807 which directed that they be surveyed and authorized the President to establish a land office for their sale.

In the meanwhile a first step had been taken toward the extension of the land system over the rest of the territory northwest of the Ohio, for in 1804 the Surveyor-General had been instructed to have the lands there, to which the Indian title had been or shall hereafter be extinguished, surveyed in the usual way. Three land offices were established, at Vincennes (Indiana), Kaskaskia (Illinois), and at Detroit (Michigan), the whole region still forming Indiana Territory. But before any surveys could be made the private land claims had to be investigated, and at the passing of the act but little land had been acquired from the Indians. In 1803 most of the tribes which had joined in the Greeneville Treaty entered into a second which

[1] In 1804, the S. C. cession of 1787, was attached to the Miss. Territory.

defined the limits of the cession adjacent to Vincennes. This was practically all the land open to survey in Indiana at the time of the passing of the Act of 1804, with the exception of Clark's Grant and the land above the mouth of the Kentucky River ceded in 1795. In Illinois a considerable cession had been secured from the Kaskaskias in 1803—but other tribes disputed the region. The next year a valuable tract along the Ohio, in Indiana, was secured from the Delawares and attached to the Vincennes district, the cession being ratified in 1805 by the Miamis, Eel Rivers, and Weas, who in turn continued the ceded land eastward to the Greeneville Treaty line. In the latter year, also, the Piankishaw Indians turned over a tract which completed the acquisition of the entire north bank of the Ohio, from the Pennsylvania line to the Mississippi. In 1804, the Sacs and Foxes ceded what purported to be the northwest half of the State of Illinois, with a little of Missouri and Wisconsin as well. This land was attached to the Kaskaskia district in 1805, but other treaties, as late as 1833 in one case, were necessary before the claims of other tribes were satisfied. The first land sales in the Indiana Territory took place at Vincennes in 1806. It was not until 1814 that lands were offered in the Kaskaskia district, due to the delay caused by the private claims, while the Detroit office was not opened until 1818.

The acquisition of Louisiana in 1803-4 was fol-

lowed by the erection of two land districts, with a Register in each, in the Territory of Orleans (later the State of Louisiana), while a Recorder of land titles was appointed for the District of Louisiana (the remainder of the Louisiana Purchase). This Act of 1805,[2] was concerned with the examination of private land claims, it extended the powers of the surveyor of public lands, south of Tennessee, over the Territory of Orleans, but it established no land offices nor did it intimate when the lands would be placed on sale. The next year the powers of the Surveyor-General were extended over the Territory of Louisiana[3] while another act of the same session authorized the President to appoint a Receiver for the western district of the Territory of Orleans and to place the surveyed lands therein on sale. But twelve years were to elapse before any land in the great Louisiana Purchase was placed on public sale. In the meanwhile vast areas were being confirmed as private claims or given as donations to early settlers.

In 1807 two new land offices were opened, one at Jeffersonville, Indiana, for land on the Ohio between the Cincinnati and Vincennes districts, and the other at Canton, Ohio, for land between the United States Military tract and the Connecticut Reserve, the Indian title to most of which having been extinguished in 1805. At this time, there-

[2] March 2, 1805.

[3] Feb. 28, 1806, ch. 11. "District" changed to "Territory" by act of Mar. 3, 1805.

fore, there were six land offices in Ohio, two in Indiana, and two in Mississippi Territory where lands were on sale.

Although the Choctaws had made a very important cession in 1805 along the southern border of Mississippi (state) the land was not attached to a land district until 1808, while the land ceded in 1805 by the Cherokees and Chickasaws was placed on sale in 1809 in Madison County, Alabama. No further cessions took place in the southwest until after the war of 1812, and during those years of Indian warfare the land sales were greatly reduced in the offices east and west of the Pearl River.

The year 1805 had been rich in Indian cessions. Nine treaties had been concluded covering territory in all parts of the public domain save the far northwest. The next year saw but a single treaty, that with the Cherokees, which covered ground already ceded in 1805. Two treaties were concluded in 1807, one of them with the Ottawas, Chippewas, Wyandots and Potawatomis, opening up the first large tract of public land in Michigan; while of the two treaties in 1808, one covered a considerable territory in Missouri while the other gained the right of way for two roads, one from the rapids of the River Miami, which flows into Lake Erie, to the Connecticut Reserve, along which land for one mile on each side was ceded for settlement; and the other from Lower Sandusky, Ohio, to the Greeneville treaty line to the south, but in this case no settlement was allowed. The cessions of 1809 were

in Indiana and Illinois and were attached the next year to the Vincennes and Cincinnati districts. Then came the troubled relations with the tribes on both sides of the Ohio and no further Indian treaties were made until 1814 when, after Jackson's defeat of the Creeks, they were penalized to the extent of about half the area of Alabama and a wide strip along the southern border of Georgia. After 1815 the Indian title, especially in the south was rapidly extinguished.

The Indian title to most of the present state of Louisiana had been extinguished before the American occupation, only little strips on the northern and northwestern borders were acquired by the United States. The delay in extending the land system there was due to the private land claims not to Indian rights. In 1811[4] provision was made for the establishment of four land offices west of the Mississippi, three being in the Territory of Orleans, and one in the Territory of Louisiana. The former were to be at New Orleans, Opelousas, and at a place north of the Red River to be determined by the President. This act also designated the first day of January, 1812, as the date for the commencement of the sales in Orleans Territory. But this date proved premature, and instead the President was authorized to designate the day for the opening of the offices.[5] Before this act became known in Louisiana the register of the Opelousas office and the principal deputy surveyor

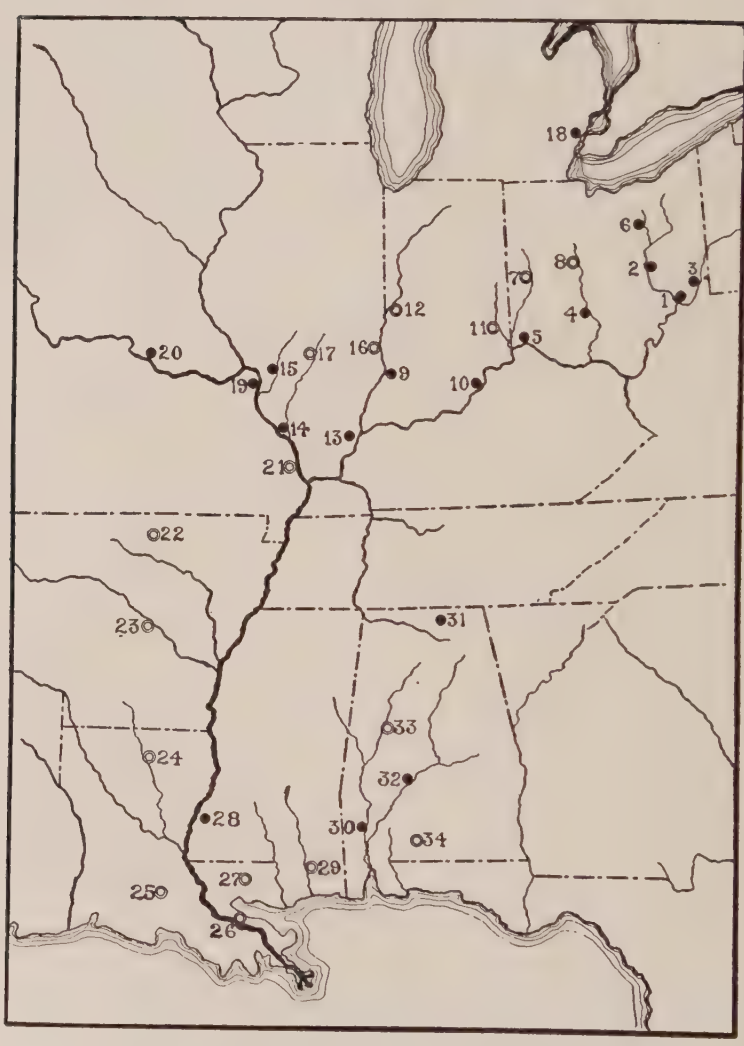
[4] Mar. 3, 1811, ch. 46. [5] Dec. 12, 1811, ch. 4.

there had proceeded to place some land on sale. It required special legislation to permit the buyers to complete their payments and secure patents.[6] No further sales were made for several years.

The next land office was established in 1812 at Shawneetown,[7] in Illinois, for the sale of lands between the Kaskaskia and Vincennes districts, and as there were no private land claims in this region it was possible to commence the public sales in 1814, before any land was sold in the much older Kaskaskia district. It was in 1815, also, that the land along the road in Ohio, ceded in 1808, was attached to the Canton district and placed on sale. And provision was also made for the survey and sale of the rich lands in Alabama, ceded by the Creeks in 1814. This cession was to comprise a separate land district, the land office at first being established at Milledgeville and in 1817 at Cahawba. The first lands were sold in 1816 and within the year this office sold land worth $753,849, a record figure up to that time.

A third land district was established in Illinois at Edwardsville in 1816, which included the ceded lands north of the base line. Although the greater part of Illinois had been covered by the Indian cessions of 1803-4, much of the same region was not finally ceded until the treaties of 1816, 1818, and 1819. Three important cessions were obtained in 1816 covering rich land in northern and eastern Alabama. These treaties were made with the

[6] July 1, 1812, ch. 118. [7] Feb. 21, 1812, ch. 29.



● LAND ON SALE BEFORE 1820
◎ LAND OFFICES 1821

KEY TO MAP OF LAND OFFICES, 1821

(1) Marietta, 1800.
(2) Zanesville, 1803.
(3) Steubenville, 1800.
(4) Chillicothe, 1800.
(5) Cincinnati, 1800.
(6) Wooster, (Canton, 1807).
(7) Piqua, 1819. (Not open).
(8) Delaware, 1819. (Not open).
(9) Vincennes, 1804. (1806).
(10) Jeffersonville, 1807.
(11) Brookville, 1819. (Not open).
(12) Terre Haute, 1819. (Not open).
(13) Shawneetown, 1812. (1814).
(14) Kaskaskia, 1804. (1814).
(15) Edwardsville, 1816.
(16) Palestine, 1819. (Not open).
(17) Vandalia, 1819. (Not open).
(18) Detroit, 1804. (1818).
(19) St. Louis, 1811. (1818).
(20) Franklin, (Howard County) 1818.
(21) Cape Girardeau, 1818. (Not open).
(22) Polk Bayou (Lawrence County, Arkansas) 1818 (not open).
(23) Little Rock (Arkansas County) 1818 (not open).
(24) Monroe ("Northern District of Louisiana") 1811 (not open).
(25) Opelousas ("Southwestern District of Louisiana") 1811 (not open.)
(26) New Orleans, 1811. (Not open.)
(27) St. Helena, 1819. (Not open.)
(28) Washington ("West of Pearl River") 1803. (1807).
(29) Jackson Court House, 1819. (Not open.)
(30) St. Stephens ("East of Pearl River") 1803 (1807).
(31) Huntsville, 1803. (1807).
(32) Cahawba, 1817. (Milledgeville, 1816).
(33) Tuscaloosa, 1820. (Not open).
(34) Conecuh, 1820. (Not open.)

Dates in parentheses show when sales commenced, if later than opening of office. (Not open) means not open for sales in 1820.

Cherokees, Chickasaws and Choctaws. The next year Congress provided for the surveying of the land and attached it to the Madison County district, the land office of which was Huntsville. These lands began to come into the market in 1817, and as has already been pointed out the combination of rich cotton lands and cheap money caused the Alabama speculation of 1818 and 1819. The sales at Huntsville, Alabama, for the fiscal year 1818-19 amounted to 774,989 acres at a price of $4,775,303. At Cahawba 1,046,564 acres were sold at a price of $3,764,431.

Legislation was also necessary for the sale of reserves set apart for any reason. Acts of this kind would attach the land to the nearest land district and provide for the survey and sale. Examples of this would be the acts covering small tracts ceded at Greeneville in 1795: the two mile square tract at the lower rapids of Sandusky River, and the twelve mile square tract at the rapids of the Miami of the Lake were placed on sale in 1817. In that year also the unlocated land in the reserve for Canadian Refugees was attached to the Chillicothe District, and two years later the unused balance of the 100,000 acres granted the Ohio Company for donations was attached to Marietta.

In the meanwhile the surveys in Missouri had been proceeding rapidly. In 1812 Congress provided for such surveys as the President might direct, but at first the surveying of confirmed claims and donations occupied the attention of the sur-

veyors. Six years later, when about 9,000,000 acres had been surveyed, Congress prepared for placing the lands on the market by establishing four new land offices, in addition to the one at St. Louis. These were to be at the county seats of Howard and Lawrence counties; at Jackson, in Cape Girardeau County; and at some place in Arkansas County. The President was to direct that the lands be placed on sale when he saw fit. Two land offices were opened in 1818, at St. Louis and at Franklin, Howard County, just in time to serve the purpose of the land speculators. These were the first lands to be regularly sold in the Louisiana Purchase.

Earlier in the year the first land sales—except of preëmpted lands—took place at Detroit. In 1819 four new offices were established, at Piqua and Delaware, Ohio, and at Brookville and Terre Haute, Indiana, the two latter for the great Miami cession of 1818, and the next year offices were added at Tuscaloosa and Conecuh Courthouse, Alabama, and at Vandalia and Palestine, Illinois, but sales did not commence until 1821.

To follow the extension of the land system across the continent would be a tiresome task. Enough has already been said to indicate the process which was only repeated year after year. Indian cessions, surveys, sales—that was the normal process, interfered with at times by private land claims and always by squatters after preëmption became authorized. But this normal process gave some opportunity for political operations. Western Con-

gressmen tried to hasten the extinguishment of the Indian title, tried to secure increased appropriations for surveys and then tried to have the work carried on in their respective districts, and each one would have liked to see a land office established at his home town. In this, as in so many other ways, the control of the public lands was a vital question generally of first importance in the minds of the western peoples and their vigorous representatives.

At the end of the credit system there were eighteen land offices open for the sale of lands, while others had been established solely for the investigation and confirmation of private land claims. Of the eighteen offices, twelve were northwest of the Ohio, three in Alabama, one in Mississippi and two in Missouri. The accompanying maps show the relation of the Indian cessions to the extension of the land offices.

CHAPTER VIII

THE SYSTEM OF SURVEYS

Most important of all the provisions of the great Ordinance of 1785 was that which required surveys before any land could be offered for sale, and this condition was insisted upon even at the cost of delayed sales and increased expense. The prior survey has been of inestimable value in the orderly settlement of the great west. First of all it provided definite bounds, free from overlapping claims, to every land holder; then it gave a security against lost or forgotten bounds, for with the government records every point could be redetermined; finally it rendered possible the simplest kind of a deed for the conveyance of property. A line or two of description would do better service than a whole page under the old colonial system. Other benefits derived from the surveys could be enumerated. The trained surveyors were required to report on the quality of the lands and the natural phenomena coming under their observation. In this way a great amount of reliable information was obtained along with the extension of the surveys. But the security of title and the simplicity of conveyance were the two great contributions of the land surveys.

Prior surveys alone would not have secured all these advantages. In the southern states and in Kentucky and Tennessee, surveys were required to be made before a patent could pass. But these surveys were "indiscriminate." Under that system it was not possible for the surveyors to know accurately what other surveys had been made, especially when large tracts were being laid off, so over-lapping surveys were frequent and land litigation was constantly going on. It was the great work of the men of 1784 and 1785 to insist upon discriminate surveys, so worked out that no possible confusion could result. And although they did this in a general way, it was left to others to perfect the system and hand it down to us in its present splendid form.

It is a remarkable thing that apparently, and of course more light may be thrown upon this point at some future time, the method of executing the discriminate prior surveys aroused little opposition or criticism in the old Congress, nor was it considered important enough to merit discussion in any of the contemporary correspondence now available. Jefferson was chairman of the committee which, in 1784, reported the first proposed land ordinance, with its "hundreds" of ten geographical miles square, and its lots of one mile square. Unless evidence to the contrary may be found, he should be credited with the authorship of the report. But it has already been pointed out that the general plan of prior surveys, and of tiers of townships,

N.

36	30	24	18	12	6
35	29	23	17	11	5
34	28	22	16	10	4
33	27	21	15	9	3
32	26	20	14	8	2
31	25	19	13	7	1

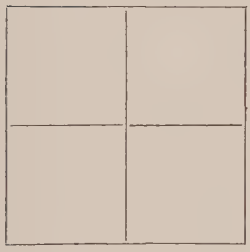
Ordinance of 1785

N.

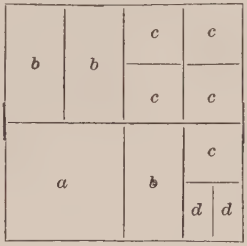
6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Act of 1796

Method of numbering sections in a township.



A township in the United States Military District, Ohio.



Four sections showing legal subdivisions.

a. Section.
b, b, b. Half-section.
c, c. Quarter-section.
d, d. Half quarter-section.

Public Land Surveys.

was already in operation in New England and was later insisted upon by New England members in 1785. In other words, Mr. Jefferson did not "invent" this system of surveys, he merely applied a well understood system to the greater areas of the northwest. At that session of Congress he was appointed, with Adams and Franklin, to a diplomatic mission, remaining abroad until the end of 1789. He therefore was not in Congress when the Ordinance of 1785 was enacted, nor do his published writings show that he ever expressed any personal interest in the land system, as would doubtless have been the case if he had been the father of it. In fact, on hearing of the enactment of the measure he wrote to Monroe, "I am much pleased with your land ordinance." [1] Although Jefferson has generally been credited with the introduction of the system of surveys, it would seem, from the above facts, that his services were slight and might well have been performed by anyone else. Some credit surely belongs to the men who, in 1785, perfected the rough plan and made it law.

The system of surveys established in 1785 was based upon the plan of 1784, with certain modifications. The townships were to be six miles square and the statute mile was to be used. The first north and south line was to be the western boundary of Pennsylvania, while the first east and west line was to run from the intersection of the former with the Ohio River. All lines were to be run by

[1] Jefferson, Writings, IV., 86.

the true meridian,[2] but no provision was made for the contracting of the meridians to the North.

"The lines shall be measured with a chain; shall be plainly marked by chaps on the trees, and exactly described on a plat whereon shall be noted by the surveyor, at their proper distances, all mines, salt-springs, salt-licks and mill-seats, that shall come to his knowledge; and all water-courses, mountains and other remarkable and permanent things, over and near which such lines shall pass, and also the quality of the lands." On the township lines, at points one mile apart, the corners of the "lots" or sections[3] were to be marked "in a different manner from those of the townships." But the section lines were not to be run.

The only surveys under the Ordinance of 1785 were those of the Seven Ranges in Ohio, performed under the direction of Thomas Hutchins, Geographer of the United States, in 1785-1789. For several years no further surveys were made and in this period settlement was going on in the tracts purchased by the Ohio Company, and by Symmes, in the Virginia and Connecticut Reserves, and in the lands about the old French settlements. When the surveys were again taken up it was evident that it would not be possible to extend them progressively across the Northwest Territory. To the west of the Seven Ranges lay the lands of the Ohio

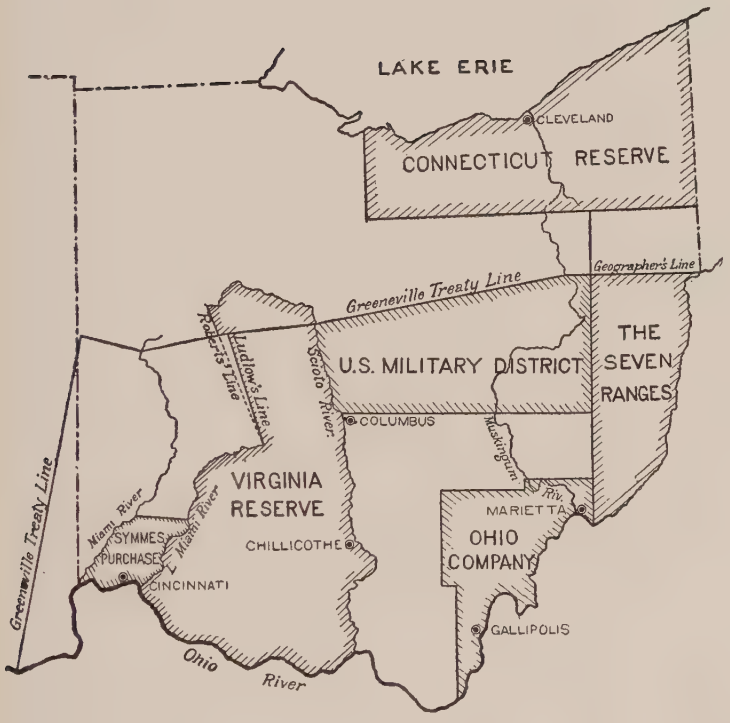
[2] Repealed, May 12, 1786. J., IV., 637. Pickering criticized the report of 1784 on this account. Pickering, I., 506.

[3] "Section" first used in act of 1796, although used in Report of 1785.

Company and to the north of them, but with some government land between, lay the United States Military Reserve, created in 1796. It was also important to make surveys along the Ohio River, between the Ohio Company's purchase and the Virginia Reserve, and again between Symmes purchase and the Indian Boundary Line. In other words, the presence of already alienated land prevented the progressive extension of the surveys. It would have been possible to connect up the separate surveys rendered necessary by these circumstances, but this was not attempted at the time, instead, the state of Ohio contains six distinct surveying areas, and out of this confusion developed the first great improvement in the system of surveys.

First of these areas was the Seven Ranges, later extended to the boundary of the Connecticut Reserve and increased to twenty-one when the cession of 1805 was surveyed. There the townships were numbered from the Ohio River and the sections numbered as in the diagram, figure 1, in the case of the surveys run prior to 1796. To the west lay the United States Military Reserve, in which the townships were only five miles square, thus preventing a continuation of the township lines in the Seven Ranges. The ranges, twenty in all, were numbered from the eastern boundary, and the townships from the southern.[4] South of the Mili-

[4] The initial point for these surveys was the southeast corner of the reservation.


LAKE ERIE
CLEVELAND
CONNECTICUT RESERVE
Geographer's Line
Greeneville Treaty Line
Roberts' Line
Ludlow's Line
Scioto River
U.S. MILITARY DISTRICT
THE SEVEN RANGES
COLUMBUS
Muskingum Riv.
MARIETTA
VIRGINIA RESERVE
Miami River
Miami River
SYMMES PURCHASE
CINCINNATI
CHILLICOTHE
OHIO COMPANY
GALLIPOLIS
Greeneville Treaty Line
Ohio River

OHIO

tary Reserve, and bounded by the Seven Ranges, the Ohio Company's lands, the Ohio River, and the Virginia Military Reserve, lay fifteen ranges of public lands which were surveyed under the Acts of 1796 and 1800. Here the ranges were numbered in continuation of the Seven Ranges, making twenty-two in all, and the townships were counted from the Ohio. In this tract the surveys were made at different times and the surveyors did not succeed in connecting up the surveys very accurately, moreover many fractional townships were caused by the Scioto River and the broken lines of the Ohio Company's grant. In all the public lands except the Seven Ranges and the United States Military Reserve the sections are numbered as in the diagram figure 2.

West of the Virginia Reserve, and between the Great and Little Miami rivers, lay Symmes' purchase. He had surveyed not only the lands which were finally patented to him but others to the north, and had sold quantities of them. This caused a variation in the national system in order to meet Symmes' surveys. The ranges were numbered from south to north, starting from Symmes' base line, and the townships from west to east. Symmes had paid little attention to the east and west lines, and the rough country and careless chaining caused odd-shaped sections to be formed.

Between the Great Miami and the Indian Boundary Line the surveys were governed by the First Principal Meridian, which runs due north from the

mouth of the Great Miami. The ranges were numbered east and west of the meridian and the townships north from the Ohio River. In the northwest corner of the state the Indian title was not extinguished until 1817 and 1818. In that tract the same meridian was used, but the forty-first degree was taken as a base line, the ranges being numbered east of the meridian and the townships numbered south and north of the base line.[5]

In this way six distinct surveying areas are found in the public lands in Ohio, and besides these are the privately surveyed lands of the Connecticut Reserve, in which townships five miles square were laid out, and of the Ohio Company and Symmes purchases, as well as the indiscriminately surveyed lands of the Virginia Reserve.

This discussion of the surveys in Ohio has touched upon the first great improvement in the surveys, which however was first worked out in Indiana. Captain Jared Mansfield, U. S. A., succeeded Rufus Putnam, the first Surveyor-General, in 1803. It was necessary for him to survey the Vincennes Indian grant of 1795, confirmed in 1803, but as the tract was surrounded by Indian lands, cut off from the other surveys and remote from the Ohio River, he was at a loss as to how to proceed. If he tried to survey the tract in conformance with the lines east of the Greeneville Treaty line he felt sure that when the lines were connected after

5 For the Ohio surveys, see Higgins, Subdivisions of the Public Lands, 92-117.

the Indian title to the intervening land was secured there would be great confusion, and if he merely surveyed the tract as a unit he would destroy any uniformity of surveys in the Indiana Territory. He therefore decided to base the surveys upon great lines which could control all future surveys in that region and to this end he ran the second principal meridian, through the northeast corner of the cession, and for a base line he used a line running from the westernmost corner of Clark's grant on the Ohio—the nearest surveyed land. This was the beginning of the combination of principal meridians and base lines which have been used in all later surveys. Both had been used before—Mansfield perfected the system and applied his brilliant talents to the astronomical location of the important points from which surrounding surveys could be made. The Second Principal Meridian governed the surveys in Indiana and those in Illinois to the western boundary of the fourteenth range west, from that line to the Mississippi and Illinois rivers the surveys have been based on the Third Principal Meridian, which runs from the mouth of the Ohio River. The lands between the Illinois and the Mississippi rivers were reserved for bounties of the War of 1812, and to expedite the surveys, as the intervening land had not been ceded, a Fourth Principal Meridian was established running from the mouth of the Illinois, extended to the north it governed the surveys in Wisconsin and in Minnesota, east of the Mississippi. In

Michigan the surveys were based on the Michigan Meridian which runs north through the center of the peninsula. The last Principal Meridian to be determined before 1820 was the Fifth, which runs from the mouth of the Arkansas River. In 1815 this line was run 317 miles and a base line commenced from the mouth of the St. Francis which reached the western boundary of Arkansas in 1841.

A further development of this combination of principal meridians and base lines was the use of frequent base lines to correct the errors caused by the convergence of the meridians to the north. Instructions were therefore given to the deputy surveyors to form new base lines twenty-four miles north, or thirty miles south of the existing one—the difference in miles being due to the more marked convergence to the north. These lines were later known as correction lines. Also in surveying the great areas west of the Mississippi it became necessary to run guide meridians between the principal meridians, the ranges being still numbered from the principal meridians but the surveys being based on the guide meridians.[6]

For historical reasons, due to the location of the Indian cessions, it was not possible to use one or two meridians for the surveys in Mississippi and Alabama. Mississippi was surveyed from five initial points. To the south the Washington meridian 91° 05′ west of Greenwich, governed the surveys to the Pearl River, and east of the river the

[6] Higgins, 121-138.

St. Stephen's (Alabama) meridian 88° 02′ west, was used. The central portion of the state was surveyed from the Choctaw meridian,[7] 90°05′ west, and the northern part from the Chickasaw meridian,[8] 89°12′ west, while a few townships east of the Tombigbee were governed by the Huntsville, (Alabama), meridian, 86°31′ west. The Alabama surveys, however, have all been made from the two meridians mentioned, the state being about evenly divided, the northern part controlled by the Huntsville and the southern part by the St. Stephen's meridian. Finally, for the Louisiana lands east of the Mississippi the St. Helena meridian was used, differing but slightly from the Washington meridian used in Mississippi to the north, the former being 91°05′ west, and the latter, 91°11′ west, while for the lands west of the river the Louisiana meridian, 92°20′ west, was used. The base line for the St. Stephen's, Washington, St. Helena, and Louisiana meridians is the 31° north latitude. For the Huntsville and Chickasaw meridians the 35th parallel is used, while for the Choctaw meridian the base line runs from its southern extremity.

An extended account of the method of executing the surveys would be out of place in a study of this kind. A brief account would only confuse the non-expert and would be of no value to the specialist. An excellent account of the early surveys is given in Niles' Weekly Register[9] for April 12, 1817, a

[7] Cessions of 1820 and 1830. [8] Cession of 1832.

[9] Niles' Register, 12, 98-99.

selection from which will doubtless give the more interesting features of the system at that time.

"The north and south lines are run by the true meridian, and the east and west lines at right angles therefrom, as far as practicable, in closing. But as the east and west lines are made the closing lines of the sections or townships, they frequently vary a little from those points; being run from one section or township corner to another. The lines are well marked by having all those trees which fall in the line notched with two notches on each side where the line cuts, and all or most of the trees on each side of the line and near it blazed on two sides, diagonally or quartering towards the line.

"At the section corners there are posts set, having as many notches cut on two sides of them as they are miles distant from the township boundary, where the sectional lines commenced. At the township corners the posts have six notches made on each of the four sides facing the lines. Wherever a tree falls exactly in the corner, it supplies the place of a post, and is marked in the same manner. The places of the posts are perpetuated thus: at each corner the courses are taken to two trees, in opposite directions as nearly as may be, and their distance from the post measured. These trees are called 'bearing trees,' and are blazed on the side next the post, and one notch made with an axe in the blaze. But in prairies, or other places where there are no trees, within a convenient distance for bearings, a mound of earth is raised at each corner,

not less than two and a half feet high, nor less than that in diameter at the base, in which the mound-posts are placed.

"At the section corners, the numbers of each section, together with the numbers of the township and range, are marked with a marking iron (such as are used in mills and warehouses) on a bearing or other trees standing within the section and near to the corner, thus: A blaze, large enough for the purpose, is made on the tree, and on the blaze the letter R. is made, with the number of the range annexed; below this the letter T. with the number of the township; and under that the number of the section, without any letter to denote it. To the number of the township the letter N. or S. is added, according as the township lies north or south of the base-line; and to the number of the range, the letter E. or W. as the range may be east or west of the principal meridian. By proper attention to these numbers and marks a purchaser is enabled to know the quarter and number of the section he wishes to enter, and the number of the township and range in which it lies. . . .

"The quarter section corners are established in the same manner that the section corners are, but no marks are made for the numbers of the section, township and range; '1-4 S.' only, is marked on the post.

"On the township and range lines, the section corners are established and marked only for the townships adjoining on the north and west of

those lines respectively; because in the subdivisions of the townships into sections, the lines are run out from the south and east, to the north and west boundaries of the townships, and the corners established thereon at the intersection, for those sections between which the lines are thus run. These lines generally intersect the north and west boundaries of the townships a few links distant from the corners, thereon, of sections in the adjacent townships; in all which cases there are *two* corners adjacent to each other, and bearing trees and posts for each; and, without proper attention to the marks, and to the courses of the lines, it might be somewhat difficult for persons exploring the land, to distinguish them from each other. But where the section lines intersect the township boundaries *at* the corners thereon, such corners become common to the sections in both townships; the proper marks and numbers being made for and within each.

"The deputy surveyors are required to note particularly, and to enter in their field books, the courses and distances of all lines which they may run; the names and estimated diameters of all corner or bearing trees, and all those trees which fall in the lines, called station or line trees, together with the courses or distances, of the bearing trees from their respective corners, with the proper letters and numbers marked on them; all rivers, creeks, springs and smaller streams of water, with their width, and the course they run in crossing the

line, and whether navigable, rapid, or otherwise; also the face of the country, whether level, hilly or mountainous; the kinds of timber and undergrowth with which the land may be covered, and the quality of the soil; all lakes, ponds, swamps, peat or turf grounds, coal beds, stone quarries; uncommon natural or artificial productions, such as remains of antient fortifications, mounds, precipices, caves, &c., all rapids, cascades or falls of water; minerals, ores, fossils, &c. The true situation of all mines, salt licks, salt springs and mill seats which may come to their knowledge. From the returns of the surveys thus made, a complete knowledge of the country may be obtained, and maps thereof drawn with the greatest accuracy. The field notes of the surveyors, together with the plats and descriptions, made out therefrom, are filed in the office of the surveyor-general of the United States, or of the principal surveyors for the territories of Mississippi, Illinois and Missouri." [10]

This brief description gives a very good idea of the early surveying methods. Excellent as they were at the time they have been much improved since. But it must not be supposed that all the lines were run according to the instructions. Errors in locating starting points, difficulties in running surveys through densely wooded country or over

[10] For information regarding the early surveys, see Niles' Register, 12:97-101, 406-8; 16:362-3. For field notes of a survey in 1812, see P. L. II., 735-7. For the general subject see Higgins, Subdivisions of the Public Lands. For later surveys see Donaldson, The Public Domain (1884).

rough ground, and at time needless carelessness, caused irregular surveys and much confusion. In 1798, Rufus Putnam, the first Surveyor-General, urged that the lines be run by the magnetic meridians rather than by the true meridian, because of the necessity of taking frequent accurate observations.[11] Fortunately Congress refused to consider the change. It was early appreciated that the convergence of the meridians would distort the shape of the townships, so in 1800 it was provided that the excess or deficiency should be added to or deducted from the western or northern ranges of sections or half sections.[12] All the other divisions were to be sold as containing the legal quantity, but those on the north and west sides should be sold as containing only the specific quantity expressed on the plats. In Arkansas, especially, some very remarkable townships were laid out due to careless surveying. This provision of 1800 was enacted in another form in 1805,[13] when it was held that the tracts would be considered as containing the exact quantity contained in the surveyor's returns. Frequent attempts were made by land purchasers to secure indemnification for errors in the surveys. But without success. At times these errors were considerable, and a hardship was incurred, but, on the other hand, it happened quite as frequently that the purchaser would profit.

The execution of the first surveys was entrusted

[11] P. L. I., 83.

[12] May 10, 1800.

[13] Feb. 11, 1805.

to Thomas Hutchins, the Geographer of the United States, and to the surveyors elected by Congress, one for each State. They were to be paid $2.00 for each mile, including all expenses incurred. Under the Act of 1796 a Surveyor-General for the territory northwest of the Ohio was commissioned, Rufus Putnam holding the first appointment, from 1797-1803. He received a salary of $2,000 a year and was authorized to select his assistant surveyors. The entire cost of the surveys was limited to $3.00 a mile. He was succeeded by Jared Mansfield, who served until 1814, later serving as a professor at West Point. In 1803 a surveyor south of Tennessee was appointed, whose powers were extended over Orleans Territory in 1805, while those of the Surveyor-General were extended to Louisiana Territory the next year. In 1816 a surveyor for Illinois and Missouri was appointed, the latter territory including Arkansas. The next year a surveyor for the lands in northern Mississippi was appointed, and his powers were confined to Alabama by Act of 1818. Such was the organization of the surveying forces in 1820. The Surveyor-General, whose district was now confined to Ohio, Indiana, and Michigan, and the three other surveyors, appointed their deputies and directed the surveys within their districts. This organization was not a perfect one. Delay and confusion resulted from having the surveyor south of Tennessee in charge of the surveys in Louisiana, but it was not until 1831 that a surveyor

for the latter State was provided. So a later development was the providing of a surveyor-general for each State, as is the custom to-day. When the surveys within a State were completed, the office was closed and the records transferred to the State. The first State to possess these records was, naturally, the first public land State, Ohio receiving the records of the surveys within her limits on July 29, 1846.

After 1820 the surveys were gradually perfected. New meridians and new base lines were used for the extension of the surveys until they reached the shores of the Pacific. Some changes were necessary when the mines of the West were being located upon the public lands, and doubtless provision should have been made for a more equitable division of water rights in the arid regions. But these questions arose long after the period of the present study. In 1820, at all events, the surveys were being rapidly extended and were playing an important part in the orderly settlement of the rich lands of the Middle West.

CHAPTER IX

THE CONFIRMATION OF FOREIGN TITLES

One of the most troublesome problems affecting the public domain was the confirmation of foreign titles. As the United States from time to time took over foreign soil it was called upon to confirm the existing property rights in the acquired territory. This would have been comparatively simple if, under the former rulers, the granting of land had been conducted under a uniform system and if the titles held by the claimants were subject to easy proof. But such was not the case. In the country northwest of the Ohio were settlers claiming under French and British grants, in the southwest were claimants under British and Spanish. In Louisiana there were French and Spanish, in Florida, British and Spanish, and in California and the far Southwest claims founded on Spanish and Mexican grants. Very few indeed of these grants had ever been perfected; many of them were merely permissions to settle. In legislating for them, Congress was dealing with land systems which it little understood, and in dealing with them in a legislative instead of a judicial way it had to devote to them more time than it could well spare and yet not as much time as the intricate subject

demanded. In dealing with these foreign titles the object of Congress, as described by Gallatin, was "to guard against unfounded or fraudulent claims, to confirm all bona fide claims derived from a legitimate authority, even when the title had not been completed, and to secure in their possession all the actual settlers who were on the land when the United States took actual possession of the country where it was situated, even though they had only a right of occupancy."[1] It is easy to realize that this was a most difficult undertaking. Where few of the settlers held perfected grants it was difficult to legislate, for stringent rules framed against fraudulent claims would affect old settlers whose titles were incomplete, while moderate requirements would offer an opportunity to the land-grabbers. But until the foreign titles were confirmed it would be unwise to survey and sell any land about the settled districts. So the confirmation of the claims held up the extension of the land system. In the meanwhile the American settlers, unable to buy land from the government, would purchase foreign land claims or would calmly settle on available vacant land. It was the presence of this new element which always complicated the process of confirmation. The land speculators would buy up claims and transfer them from hand to hand, and there were always those who would make false oaths and swear to suit the occasion. The "squatters" would petition for relief because

[1] Gallatin, writings, III, 220.

the land sales were being delayed, and frequently a preëmption was allowed such settlers long after the territory came under the American flag. In these ways, and in others to be mentioned, the foreign titles affected the regular American system.

A study of Congressional action on foreign land titles would make a considerable book in itself. Uniform legislation seemed impossible because of the different historical conditions in each case. In its desire to confirm the claims and open up the vacant land for settlement Congress would pass hasty and ill-considered laws which would require constant adaptation. Generally Congress would empower specially appointed commissioners or the Registers and Receivers of land offices to pass upon the claims and report. This would require the enactment of rules for the determination of the claims, and after the report was transmitted Congress would have to confirm or reject the claims. It was not until 1824 that land claims were allowed to be settled in court, and that only in Missouri and Arkansas. The policy developed slowly and not uniformly. If Congress could, at the very beginning, have erected a tribunal with extensive powers to settle decisively all land claims, it would doubtless have expedited the process and prevented many of the abuses that grew up under the system of Congressional control.

At various times Congress had to to deal with five bodies of foreign land claims, those in the old Northwest, the old Southwest, the Louisiana coun-

try, Florida, and the Mexican Southwest. It will serve the purpose of this study if only the first of these groups is examined, for in the Northwest were conditions similar to those found elsewhere, although the grants were not so extensive, and in meeting them Congress laid down precedents for later legislation.

The Treaty of Paris, at the close of the Revolution, made the United States mistress of a great amount of territory lying between the Alleghenies and the Mississippi, which, although claimed by various States, had never been under the administration of any of the original States.[2] In this region were settlers whose grants, if they possessed any, were derived from the preceding governments in the Northwest, from France or Britain, in the Southwest from Britain or Spain. The Treaty of Paris confirmed the property rights of these settlers, and in the case of the settlers in the Northwest their interests were further safeguarded by the terms of the Virginia cession. In the unaccepted offer of 1781 [3] Virginia had stipulated that the French and other inhabitants of the Northwest who professed themselves citizens of Virginia should have their possessions confirmed to them, and this clause was retained in the accepted offer of 1784. The attention of Congress was directed to the settlers there because this was the first region to become available for national land sales, and

[2] Except the Virginia occupation, 1779-1787.

[3] Hening, X., 564-7.

until the foreign titles were roughly estimated or confirmed no safe land sales could take place.

In 1788, when the great land sales to companies were under way, George Morgan and his associates desired a large tract of land on the Mississippi. This led to a consideration of the claims of the French settlers in the Illinois country, and the following report was adopted by the Congress of the Confederation on June 20, 1788.[4] In the first place, the committee reported that there were only a few settlers to consider. At Kaskaskias there were "near eighty families"; at Prairie du Rocher, twelve families; at Kahokia, near fifty families, and at Fort Chartres and St. Philip's, four or five families. It was the custom for the heads of families to have a certain quantity of arable land allotted to them and a share of the meadow, wood, and pasture land. The committee recommended that the claims for lands held at the beginning of the Revolution should be satisfied and that an additional reserve might be made to meet their future needs. It was agreed, therefore, that a general reserve should be set apart for the claims of those who were citizens of the United States "or any one of them" before 1783, and in this reserve donations were to be laid out of 400 acres to each head of a family. These donations were to be distributed by lot, and they could not be alienated until the grantee had lived three years in the district after the distribution. The Governor of the

[4] J. IV., 823-4.

Northwest Territory was to examine the titles and lay off the land at the expense of the claimants.

This resolution is given in detail because it shows the apparent simplicity of the process of confirming the claims on the Mississippi. About 150 families were to be considered, and these possessed so little land that Congress was willing to offer 400 acres as a donation to each head of a family. Unfortunately Governor St. Clair found the matter far more complicated.

In August similar resolutions were passed in favor of the settlers at Vincennes, on the Wabash.[5] In this case, also, only the claims of those who had settled before 1783 and who had professed themselves citizens of the United States were to be confirmed, while a donation of 400 acres was to be made to each head of a family. On the preceding day the donation reserves on the Mississippi were ordered to be located outside and east of the general reserve,[6] a change which happened to throw them into very poor land. But all ancient improvements were to be considered reserved for their owners.

These resolutions of the old Congress only applied to the settlers at Vincennes and on the Mississippi about Kaskaskia. Nothing was done about the settlers in Michigan or in other parts of the Northwest, and, as a matter of fact, the American occupation of the latter regions did not commence

[5] Aug. 29, 1788. J. IV., 858. [6] Aug. 28, 1788. J. IV., 857.

until June, 1796. Moreover, the Governor was given complete powers to determine claims and lay off donations; he was only required to report his proceedings to Congress. No date was set for the final presentation of claims.

It was not until February, 1790, that Governor St. Clair could visit Kaskaskia and organize civil government there, while he was forced to send Winthrop Sargent, the Secretary, to attend to the affairs at Vincennes. It was the report of the latter, of July 31, which first came to the attention of Congress and showed conclusively that further legislation was necessary.

At Vincennes, Sargent found[7] that the records were very imperfect, that not one title in twenty was complete, and that oral testimony had to be accepted instead of written documents. The original concessions made by the French or British commandants were generally made on a scrap of paper, and although it was the custom to lodge them with the notary, that official kept no book of records, and the loose papers were frequently lost or abstracted. At one time the royal notary "ran off with all the public papers in his possession," while in the period between 1777 and 1788, "the records have been so falsified, and there is such gross fraud and forgery, as to invalidate all evidence and information" which might have been acquired from them.

In June, 1779, a court of civil and criminal juris-

[7] P. L. I., 9-16.

diction had been established by Virginia, and this court, without any authorization, proceeded to grant lands. Between 1779 and 1783, 26,000 acres were apparently granted, and 22,000 more up to 1787, when General Harmar put a stop to it, but many of these grants might have been forged in the notary's office. Sargent was unwilling to consider any of these grants "rightful claims," although in a few cases improvements had been made.

Again, there had been some movement of settlers between the French settlements, which, under the law, would deprive them of grants at either place; there were 131 residents of Vincennes who had done militia service and who, in many cases, became heads of families shortly after 1783; there were 5,400 acres of land used as a common by the people of Vincennes for which no provision was made; and there were a number of persons settled on a 150-acre tract originally granted to the Piankishaw Indians, but by them gradually sold to the settlers.

After laying these deserving cases before Congress, Sargent further reported that he had instructed the surveyor to lay off certain lands properly claimed by the residents, that he had approved donations to 120 men and 23 women who were heads of families in 1783, and that he had laid out but withheld donations for fifteen heads of families who had removed.

Governor St. Clair reported his proceedings at

Kaskaskia in a letter of February 10, 1791.[8] The situation there was similar to that at Vincennes. In addition to the court grants were those of Todd and De Numbrun, lieutenants of the County of Illinois, appointed by Virginia, and there were also lands claimed under the purchases from the Kaskaskia Indians. St. Clair also reported that the residents were too poor to pay for the surveys of their confirmed claims. "The Illinois country, as well as that upon the Ouabash, has been involved in great distress ever since it fell under the American dominion. With great cheerfulness the people furnished the troops under General Clarke, and the Illinois regiment, with everything they could spare, and often with much more than they could spare, with any convenience to themselves: most of the certificates for those supplies are still in their hands, unliquidated and unpaid; and in many instances, where application for payment has been made to the State of Virginia, under whose authority the certificates were granted, it has been refused. The Illinois regiment being disbanded, a set of men, pretending the authority of Virginia, embodied themselves, and a scene of general depredation and plunder ensued. To this succeeded three successive and extraordinary inundations from the Mississippi, which either swept away their crops or prevented their being planted. The loss of the greatest part of their trade with the Indians, which was a great resource, came upon them at this

[8] P. L. I., 18-22.

juncture, as well as the hostile incursions of some of the tribes which had ever before been in friendship with them; and to these was added the loss of their whole last crop of corn by an untimely frost. Extreme misery could not fail to be the consequence of such accumulated misfortunes."

Acting upon these reports Congress passed its act of March 3, 1791, which greatly increased the scope of the confirmations. It must be remembered that at this time no land in the Northwest was being sold by the United States. Persons desiring to purchase lands would have to apply to the two companies on the Ohio, or to the holders of Virginia warrants. This act met all the points raised by Sargent. Donations were to be given to heads of families who had moved from one settlement to the other since 1783, and they could elect where the donation should be laid out. Heads of families who had left the settlements since 1783 might secure the donations if they would return and occupy them within five years. Lands "actually improved and cultivated" under any supposed grant of a court or a commandant were to be confirmed up to 400 acres; and those persons, not having received a donation, who were enrolled in the militia on August 1, 1790, and who had done service, were to receive 100 acres. The 150 acres purchased from Piankishaw Indians at Vincennes were confirmed to the occupiers, and the commons at Vincennes, Cahokia and Prairie du Pont were appropriated to the use of the respective villagers.

Finally, on the Mississippi, the donation reserves were to be laid out according to the resolution of June 20, 1788, thus including a considerable amount of good land, while two private claims of a special nature were confirmed. This act, also, continued the power of the Governor to make the grants enumerated. But the donations and confirmations proceeded very slowly. The disastrous Indian campaign of 1791, and then a lack of proper surveyors, delayed actions. St. Clair also hesitated about confirming the court grants because of the discretionary powers involved. On account of the troubled nature of the country many deserving people had not been able to make extensive improvements, on which alone confirmations could be based, and in some cases the husband and father had been slain, leaving to the widow and fatherless only a claim to land. St. Clair, therefore, believed that the intention of the grantee and not the improvement of the grant should be considered, that a person contemplating a bona fide settlement should be confirmed in his claim up to 400 acres. In the meanwhile few confirmations had been made, and as the years passed it was becoming more difficult to prove former improvements or to challenge false statements. A further difficulty arose from the fact that land was claimed under improvement in the tracts reserved for the location of the donations. In 1798 Winthrop Sargent, then Governor of Mississippi Territory, stated that he had approved, at Vincennes, claims

for 22,572 acres and authorized donations of 103,800 acres.[9] He had, in 1797, added sixty names to the heads of families, and fifty-nine to the militiamen, as the result of the investigations of a board of four commissioners appointed by him.[10]

For several years the matter rested, the Governor, William Henry Harrison, after 1802, acting on the claims from time to time. Jay's treaty,[11] followed by the Indian cessions at Greeneville,[12] and the withdrawal of the British from the Western posts in June, 1796, had an immediate effect on the land system. The Indian treaty led to the general act of 1796 for the disposal of lands. Jay's treaty brought under the administration of the United States a number of settlers whose property rights were protected by that agreement. Yet eight years elapsed before Congress made any effort to confirm the land claims in Michigan.

In 1802 the attention of Congress was called to an amazing situation at Vincennes.[13] Governor Harrison reported that the members of the court established by Virginia had, before dissolution, divided among themselves the entire region to which the Indian title had been extinguished, "each member absenting himself from the court on the day that the order was to be made in his favor, so that it might appear to be the act of his fellows only." For years the grant was quiescent, but lately it

9 P. L. II., 84-90.
10 P. L. I., 576.
11 Concluded, Nov. 19, 1794. Ratified, June 24, 1795.
12 Signed, Aug. 3, 1795.
13 P. L. I., 122.

was discovered by some land speculators who began to purchase large tracts under it and proceeded to resell them in remote parts of the country. Land was sold for a song, a thousand acres for a rifle or an indifferent horse. Harrison had no intention of confirming these claims, but feared that many settlers would arrive seeking lands under such grants.

The first carefully-drawn act for the confirmation of foreign titles was that of 1803 respecting claims in the Southwest.[14] This set a definite period in which all claims must be recorded, it created two commissions to pass upon the claims, gave them power to administer oaths and examine witnesses, and made their decisions final. In this case the commissioners in each district were to be the Register of the land office therein, and two other persons appointed by the President. The method outlined in this act was a great improvement on the system in operation in the Northwest, and it was soon introduced in the latter region.

The Indian agent at Detroit had been instructed to report on the claims to land in that region. Mr. Jouett proceeded to visit all the settlements, from Otter Creek, forty-two miles southwest of Detroit, to the St. Clair (Sinclair) River, and found there some fourteen settlements, aside from Detroit, with 342 families located under all sorts of titles, from perfected French grants to mere occupancy.[15] This report, dated July 25, 1803, was submitted to

[14] Mar. 3, 1803, ch. 27. [15] P. L. I., 190-193.

Congress on February 17, of the next year, in time to be considered when the act for the sale of lands in Indiana Territory, which then included Michigan, was under discussion.

This act [16] established land offices at Vincennes, Kaskaskia, and Detroit, and appointed the Register and Receiver of each office to act as commissioners for the determining of all claims to land within their respective districts. These commissioners could compel the attendance of witnesses, administer oaths, and examine witnesses, but after they had decided the claims they were to report their decisions to Congress for its further action. All persons claiming under "legal" French or British grants or under any resolution of Congress were to deliver to the Register a notice of their claims, as well as all evidence thereof, before January 1, 1805, otherwise all right, based on any resolution of Congress, would become void.

This act, therefore, while providing for the first time a method of confirmation for titles in Michigan, also subjected all the confirmations and donations in Indiana and Illinois to a review, and that, too, after many of these tracts had changed hands. Moreover, no provision was made for incomplete foreign grants, nor would settlement alone be considered. Under this act but very few titles could be confirmed in the Detroit district.

Congress, however, did not insist upon the terms of this severe act. At the next session the time

[16] Mar. 26, 1804, ch. 35.

for submitting claims and evidence was extended to November 1, 1805, while evidence of possession and actual settlement might be advanced as a claim to land.[17]

The commissioners at Detroit submitted a partial report in December, 1805,[18] in which they stated that lands in their district were claimed under seven different titles: First, grants in fee simple by Cadillac, commandant at Detroit early in the eighteenth century, which needed no confirmation by the crown—of these there were two advanced. Second, grants by the governors and intendants of New France and Louisiana, which had been confirmed by the King of France—of these there were six. Third, similar grants, but unconfirmed by the King. Fourth, grants by the commandants at Detroit. Fifth, claims derived from the British government—of which there were about one hundred. Sixth, Indian grants. Seventh, actual settlement and occupation—about four hundred. Their final report, on March 6, 1806, recommended only six claims for confirmation and transmitted a great mass of rejected claims.[19]

The commissioners at Vincennes reported on March 25.[20] They submitted three classes of claims, those decided on and confirmed by the governors, those not decided on by the governors, and those not embraced by any act of Congress. In the former class they found difficulty in determin-

[17] Mar. 3, 1805, ch. 43. [18] P. L. I., 263-284. [19] P. L. I., 305.
[20] P. L. I., 288-303. P. L. VII., 675-727. P. L. I., 558-581.

ing whether the confirmation was based on French or British grants or on improvements under a court deed; in all, 354 had been made. They found that 243 grants of donation lands had been made, and 221 militia donations as well. Of the previously undecided claims they recommended for confirmation 19 based on ancient French and British grants, 16 based on improvements under court deeds, 13 militia donations, and 17 donations to heads of families. They also rejected a number of claims because of lack of evidence, and laid before Congress several claims based on unauthorized Indian purchases and on the extensive fraudulent grants made by the court at Vincennes. In a supplementary report of November 26,[21] the commissioners transmitted a list of grants and confirmations by the governors which had not been presented by the then claimants, and the question was raised as to whether their failure to comply with the law of 1804 could invalidate their titles. Two additional donation claims were favorably reported.

Before these reports were laid before Congress two acts were passed concerning these perplexing titles. One authorized the Governor and Judges of Michigan Territory to lay out a town to take the place of old Detroit, destroyed by fire on June 11, 1805.[22] In the enlarged townsite lots were to be granted to American citizens who were resident

[21] P. L. I., 558-581. [22] P. L. I., 247.

there at its destruction.[23] The other authorized the laying out of tracts near Vincennes and Kaskaskia in which all grants were to be located.[24]

It was desirable that Congress take some action on the commissioners' reports. Until the claims were confirmed there could be no land sales in the Kaskaskia and Detroit districts, while the delay only served to render the records and the evidence more confusing. The commissioners at Kaskaskia had reported that they could not finish their labors in time for Congressional action in 1806.[25] The situation there was an interesting one because of the fraud which was evident in the land claims. Congress waited another year, and then acted on the two reports before it.

These acts of March 3, 1807,[26] presented further proof of the sympathetic attitude of Congress toward the settlers during foreign rule. In Michigan the claims recommended by the commissioners were confirmed, and claims based on actual settlement prior to July 1, 1796, were to be confirmed up to 640 acres, but only one tract to each claimant, provided they had been submitted to the late commissioners. For deciding on the rights of the claimants the Secretary of the Territory was added to the Register and the Receiver of the Land Office, and as commissioners they were to decide the cases "according to justice and equity." Their

[23] Apr. 21, 1806, ch. 43. [24] Apr. 21, 1806, ch. 40.
[25] P. L. I., 285.
[26] Michigan, ch. 34. Indiana, ch. 47.

decisions were to be final, and on their certificate [27] a patent would eventually issue. At Vincennes, the claims reported favorably by the commissioners were confirmed, and all the confirmations by the governors as reported by the commissioners were also confirmed, except in the case of those actually rejected by the latter. The claimants of 244 acres under an Indian grant were likewise confirmed in their possessions. Finally, the commissioners at Kaskaskia were allowed until December 1, 1807, to complete their report.

On that date, however, the commissioners at Kaskaskia reported that they had by no means finished their inquiries. This delay was due to the extensive perjuries attempted in that district. In this report they stated that no less than seven hundred depositions given at St. Charles, Upper Louisiana, bearing upon claims in Kaskaskia were perjured, while two hundred depositions sworn before the board were acknowledged false.[28] In fact, they had confirmed nearly forty claims for four hundred acres each, to one man, on evidence of this nature, which they finally rejected.

The Michigan commissioners, in turn, recommended that an extension of time be granted in their district for the presentation of claims, because the ignorant Canadian settlers had not known or realized the necessity of entering their claims in due time.[29] Moreover, some settlers claimed more

[27] Must be entered with the Register before Jan. 1, 1809, and his certificate must be sent to the Secretary of the Treasury.

[28] P. L. I., 590.

[29] Sept. 1, 1807. P. L. I., 592-3.

than one farm and should be confirmed in them, although the act permitted only a single confirmation, while the old farms on the Detroit River should be extended for the "continuation" of eighty arpents,[30] instead of forty arpents, as was the custom. Settlers between 1796 and the present time should also receive some land.

This report shows how difficult it was for even a generous Congress to deal out absolute equity. It was promptly taken up, and the Act of April 25, 1808, met each recommendation. Land claims might be presented before January 1, 1809. Persons holding 40-arpent tracts might preëmpt the "continuation" before that date. Settlers between July 1, 1796, and March 26, 1804, might obtain preëmption for not over one section, and their claims must be presented in the same manner as the others for the commissioners' decision. Finally, more than one tract could be confirmed to settlers before 1796, but still not more than 640 acres.

A very little consideration would show that this act would not be satisfactory in its treatment of the recent settlers. It must be remembered that no public land was on sale in this district at the time. The preëmption to settlers between 1796 and 1804 was based on the fact that as no land office was open they had been forced to enter vacant land without purchase. But why make the final date 1804? It was selected because of the act of that date providing for the sale of lands in

[30] Arpent=4/5 acre.

this region, but as no sales had been made nor could be made until the surveys had been extended, it followed that unauthorized settlements continued after 1804, and the latter settlers, in turn, expected a preëmption of their improvements.

The next year[31] it became necessary to revive and continue the powers of the Kaskaskia commissioners until 1810 and to authorize them to consider the claims at Peoria, while a special agent was appointed to investigate claims and oppose fraudulent ones.[32] The long-delayed report was finally finished on February 24, 1810, and transmitted to Washington.[33] The commissioners pointed out the difficulties under which they had labored; the wretched state of the ancient records, which rendered it practically impossible to trace titles from original concessions; the difficulty in determining the improvements made so long ago—in this case the commissioners insisted upon the actual raising of a crop or crops and not the mere barking or deadening of trees; the confusion resulting from the emigration to Louisiana of residents entitled to donations or militia rights; and, finally, the wholesale perjury which was practiced. Fifteen men were named whose depositions were pronounced false, some of them swearing to as many as twenty claims. A study of the rejected claims shows how frequently the decision was based on "perjury" or "forgery."

31 Feb. 15, 1809. 32 June 15, 1809, ch. 3.

33 P. L. II., 123-141. Transcripts dated Dec. 31, 1809.

The commissioners did not report on any claims previously confirmed by the governors, but in addition to these they recommended favorably 22 claims founded on ancient grants, 89 based on improvements, 254 donations to heads of families resident before 1788,[34] and 279 militia rights. They also reported on the claims to the common fields and town lots at Kaskaskia, Cahokia, Prairie du Rocher, Fort Chartres, and Prairie du Pont.

By mistake only the transcript of the first three classes of claims was transmitted to Congress, so these alone were confirmed by the Act of May 1, 1810. Now, for the first time, the holders of these lands could feel sure of their titles. But no action had been taken on the governors' confirmations or on the common fields and town lots.

At this session[35] the subject was opened again at Vincennes, when the land officers were instructed to receive until November 1 the claims for donation lands of persons who were minors or were absent from the territory when the other claims were being presented. The commissioners reported on May 27, 1812, and recommended 22 donation and six militia claims.[36] They also presented a number of rejected claims and called attention to five claims for militia lands based upon residents who had been killed by the Indians before August, 1790, as well as three valid claims which did not properly come before them because

[34] No legal authority for donations after 1783.

[35] Apr. 30, 1810, ch. 35. [36] P. L. II., 455-463.

the claimants were not minors nor absentees when the claims were formerly filed. Congress, however, confirmed the recommended claims, as well as the eight special ones.[37]

This digression has broken the chronological sequence of events in the Northwest. The unconfirmed claims reported by the Kaskaskia commissioners were taken into consideration by Congress, and in 1811 two reports[38] were made by Jeremiah Morrow, chairman of the House Committee on Public Lands, recommending that the claims to common fields and town lots in Illinois be confirmed, but that the decisions of the governors should be reëxamined.

Morrow called attention to the remarkable discrepancy between the 150 families mentioned under the original resolution of 1788 and the great number of donation claims confirmed since, and he held that even at this late date Congress had the right to examine into the acts of the governors. If they exceeded their instructions and made confirmations not authorized by law, or if they for any reason accepted fraudulent evidence, in such cases their acts should not stand.

Although a measure of this kind was bound to arouse opposition, for during the past twenty years evidence in support of good titles might have

[37] Feb. 13, 1813, ch. 23. Locations in the reserved tract were to be made before Oct. 1, 1813, extended to July 1, 1815. (Dec. 26, 1814, ch. 14,) then to Sept. 1, 1818 (Mar. 18, 1818, ch. 18).

[38] Feb. 15, 1811, P. L., II., 254; Dec. 17, 1811, P. L., II., 257.

disappeared, yet Congress adopted the report and, in 1812,[39] confirmed the claims to common fields and town lots in Illinois and authorized the Register and Receiver at Kaskaskia and one other person to inquire into the validity of claims to land in their district derived from confirmations made by the governors of the Northwest or Indiana Territory.

The three commissioners under this act reported on January 4, 1813, as follows:[40] Of the claims confirmed by St. Clair and Harrison as founded on ancient grants they recommended 15, questioned 9, and referred 3 for the special action of Congress; of the confirmations based on improvements they recommended 105, questioned 35, and referred 3; of the donations to heads of families they approved 154, questioned 36, and referred favorably 17; of the militia donations they recommended 212, and questioned only 2. On January 18 the Register forwarded 18 donation, 9 improvement, and 4 militia claims which had not been submitted in time, but which he recommended for confirmation.[41] And he added: "A confirmation of these, and there will be an end to this perplexing business; unless, indeed, the government should indulge the speculators with the privilege of a reinvestigation of claims rejected by the former Board. On this subject I can only observe, that I am wearied with these painful duties, which, for

[39] Feb. 20, 1812, ch. 22. [40] P. L. II., 210-241.

[41] P. L. II., 741-3.

eight years past, it has fallen to my lot to discharge. Nor do I believe the government would be doing justice to itself, or its officers, by extending this indulgence. When witnesses have been suborned, when the ancient records have been recently interpolated, and when the officers who dared to discharge their solemn duty have been attempted to be made the victims of this corruption, it is time to close the doors against the admission of new frauds."

The next year Congress confirmed all the claims not actually rejected by the commissioners.[42] As many of these claims were not specially located, it was necessary to provide for them, so a large reserve was set apart on the Mississippi. Persons actually resident there before February 5, 1813,[43] were to be entitled to the preëmption of 640 acres or less, while the rest of the tract was subject to location by the possessors of confirmed claims. This right expired on May 1, 1815.

It goes without saying that this action was not final. The following year the land officers at Kaskaskia reported[44] for confirmation 24 improvement claims which had previously been confirmed for less than 400 acres and of which the balance was desired; 17 donations for heads of families; 1 militia donation, and 2 improvement claims which had not been submitted in time for the former

[42] Apr. 16, 1814, ch. 61.

[43] The date of the general preëmption act for Illinois Territory.

[44] P. L. III., 1-5.

report. Congress promptly confirmed these claims and extended the time for the registration of confirmed claims until October 1, 1816.[45] The period of registration was later extended to November 1, 1820.[46]

These acts practically settled all the claims to lands in Illinois under ancient grants or donations of Congress. Later legislation was necessary to confirm the claims of settlers in Peoria before January 1, 1813, but this affected only seventy claims and was easily attended to.[47] About the same time the inhabitants of Cahokia were authorized to lay out a town on their common and dispose of the lots.[48] But there were, of course, attempts to open up the question of the rejected claims. In 1818 the Committee on the Public Lands of the House reported in condemnation of the conduct of the Kaskaskia commissioners in rejecting certain of the governors' confirmations,[49] and recommended that such rejected claims as were based on parole testimony should be confirmed. This position was taken because of the many changes which had taken place in property holdings between 1790 and 1813. The controversy was not, however, reopened by Congress. A few special claims were

[45] Apr. 27, 1816, ch. 101. (This Act confirmed the claims transmitted in the report of *March* 29, 1815, but as the report was really dated *November* 29th, there was some question as to the legality of the confirmation.)

[46] May 15, 1820, ch. 117.

[47] May 15, 1820, ch. 125; P. L. III., 476-486; May 3, 1823, ch. 68.

[48] P. L. III., 432, May 1, 1820, ch. [49] P. L. III., 384.

confirmed, from time to time, but no other general legislation was enacted.

During this time the commissioners in the Detroit district had been engaged in the examination and confirmation of claims. Under the Act of 1807 their decision was to be final. From the 29th of June, 1807, until the 22d of February, 1811, they met almost daily, although frequently adjourning for want of business.[50] Favorable decisions were generally recorded as follows: "And therefore it doth appear to the commissioners that the claimant is entitled to the aforesaid tract of land, and that he have a certificate thereof, which certificate shall be No. . . ; and that he cause the same to be surveyed, and a plot of the survey, with the quantity of land therein contained, to be returned to the Register of the Land Office at Detroit." In that period some 738 claims for confirmation or preëmption were passed upon. By act of 1812[51] Congress provided that patents should issue for these confirmed claims in conformity with the general plat of the surveys returned to the Secretary of the Treasury, even though the surveys might not, in every respect, correspond with the description of the tracts confirmed. By this act, also, the preëmption of the "continuation" of the farms on the Detroit River was changed into a donation and the commissioners were authorized to grant certificates to the proper claimants, provided

[50] P. L. I., 305-557.

[51] Apr. 23, 1812, ch. 62.

they gave notice before December 1. This date was later extended to December 1, 1818.[52]

It was soon evident that a number of claims had not been presented to the commissioners within the time designated by the acts of 1807 and 1808. At Green Bay and Prairie du Chien (now in Wisconsin) were settlers who had been quite ignorant of the steps necessary for the confirmation of titles. To meet these, and similar cases, Congress revived the powers of the commissioners in the Detroit district and instructed them to pass upon the claims for donations of back lands along the Detroit River and upon all claims filed with the Register but not as yet decided.[53] A special agent was to visit the settlements at Green Bay and Prairie du Chien for the purpose of examining their claims. But in all these cases, except as to the donations, the commissioners were to report their decisions to the Secretary of the Treasury before October 1, 1821, for the action of Congress. Previously the actions of the commissioners had been practically final, no confirmation by Congress being necessary.

This act was further extended three years later.[54] The powers of the commissioners were continued until November 1, 1823, and the claims they had recommended were confirmed. In addition, it was provided that persons resident at Green Bay, Prairie du Chien or in the County of Michilimackinaw, on July 1, 1812, who continued to submit to the

[52] Mar. 3, 1817, ch. 99. [53] May 11, 1820, ch. 85.
[54] Feb. 21, 1823, ch. 10.

authority of the United States, would be confirmed in their holdings up to 640 acres.[55] On the Detroit side such a confirmation had only been made in the case of settlers before 1796, but in the case of these outposts the period was lengthened because of the delay in extending the authority of the United States to their region. But according to the act it was not sufficient to prove settlement alone, the settler must prove that he was loyal to the United States during the War of 1812.

The Commissioners submitted three reports under the Act of 1820 and six under the Act of 1823.[56] All of these were laid before Congress in 1824 because of certain irregularities in the confirmations which would need Congressional action. For over three years no action was taken, although the necessity of settling the titles was realized. The delay was in the main due to the fact that the commissioners had not investigated the question of the loyalty of the persons claiming lands as residents in 1812. There were other minor objections which finally were waived when the Act of 1828[57] confirmed all the recommended claims save those

[55] File notice of claims before Oct. 1, 1823. It was doubtful whether a confirmation of the decisions by Congress was necessary. (P. L. V., 48.)

[56] P. L. V., 47-328.

[57] Apr. 17, 1828, ch. 28. These claimants at Sault Ste. Marie, together with all persons resident there on Jan. 1, 1849, were permitted to place their claims before the officers of the local land office, who would pass on their validity and who would determine what would be a fair amount for them to pay Government for their lands when the townsite was laid out. Sept. 26, 1850, ch. 71.

at Sault Ste. Marie, which were protested as being in favor of supporters of the British in 1812.

By 1828, therefore, the general legislation affecting foreign titles in the Northwest ended; from that date only special claims were laid before Congress. Forty years had passed since the Congress of the Confederation had provided for the original confirmations. To them it had seemed an easy task to secure in their possessions the simple French settlers whom the fortunes of war had placed under their protection. But when the actual confirmations were in process the problem was complicated by the presence of masterful Americans, land speculators and squatters, until it was necessary for the agents of government to wade through "a sea of corruption" in order to carry out their duties.

Yet the experience in the Northwest was simple indeed compared with that in the Southwest, Louisiana, Florida, and California. Fundamentally the problem was the same, the endeavor to protect bona fide grants which emanated under a loose and careless system. If France and Spain and Mexico had granted lands in such a way that complete titles could easily be secured, if transfers of lands had been carefully recorded, it would have been a fairly simple matter to confirm the titles held under such grants. But in the Northwest it was found that few titles were complete, that lands had been taken up under mere permission to settle, and that recorded transfers were rare. Then when the

simple French settlers came into contact with the shrewder Americans it was easy to predict what would happen. In Louisiana, and especially in the far Southwest and California, where large tracts were granted away for a nominal consideration, where grants were imperfect and the rewards for successful fraud were great, the problem was more acute. In the Northwest the grants rarely covered more than fifty or sixty acres, so it was easy to defeat the fraudulent claims for large areas. But across the Mississippi lands had attained speculative values before the American purchase and large tracts had been granted and larger ones were claimed.

There was bound to be fraud in the confirmation of foreign titles. That was because it was essential that the matter be settled as soon as possible—a judicial determination would take too long. All territory acquired since 1783 passed into the public domain, with the exception of the State of Texas. It was necessary that the settlers be confirmed in their titles as soon as possible in order that the unclaimed land might be surveyed and opened for settlement. Even before the surveyors could begin their tasks the squatters were in possession, and every month's delay complicated the question of the confirmations. Squatters would swear against old residents, or more often swear to a long residence of their own.

Haste was essential, and as the foreign settlements were generally small and scattered, it

seemed better to make use of commissioners to pass upon titles than to wait for the establishment of proper courts. The delay in securing a judicial determination of so many claims, in most cases of small amount, would have caused more harm than good. It was not until large grants were involved, based upon intricate questions of law, and higher courts were established, that Congress was willing to permit claimed areas to be withheld from settlement pending a long judicial controversy.

Congress generally insisted upon passing upon the decisions of the commissioners, and generally it was more lenient than the commissioners themselves. Entirely too much time was given up to the consideration of these private land claims. Much of the legislation was concerned with details rather than with general rules. As a general thing, the laws dealing with these private land claims would commence fairly severely, then would grow more and more moderate, would apply to more and more classes of persons never contemplated by the original act, until finally they would turn into donation rather than confirmation acts. And far too many acts were passed merely extending the periods for registering claims or returning surveys. A few general acts could have prevented many special ones.

The effect of these private land claims upon the general land system were many and important. First of all, they held up the surveys and caused an unauthorized settlement of the region involved.

This made donation and preëmption laws seem reasonable, for respectable settlers had been forced to become squatters because no public land was open to sale. Secondly, in the days of the two-dollar minimum, and to a less extent after that time, the presence of great quantities of private land affected the later land sales. People could buy these land claims for a nominal consideration, and considerable speculation in them arose. Finally, the delays in confirming the titles caused conservative purchasers to be wary, and interfered with settlement of the more substantial sort.[58]

From every point of view the settlement of these claims arising from foreign grants was a troublesome one. In its endeavor to secure every honest settler in his just claims, Congress passed legislation which played into the hands of the speculators and the false-swearers, for it erred more often on the side of leniency than on the side of strict justice.

[58] In the general period covered by this study the United States was engaged in settling private land claims in the old Southwest, Louisiana, and Florida. Some of these claims are still undecided. It would be undesirable in a work of this nature to go into the processes of confirmation with the same detail as that given to the preceding study.

CHAPTER X

LAND GRANTS FOR MILITARY AND NAVAL SERVICES

The custom of granting land as a remuneration or a reward for military services was so ancient and honorable a one that its adoption in the earliest period of our national life can be easily understood. It was not necessary to hark back to the birth of feudalism to find precedents for these grants. The individual colonies had been accustomed to reward services in Indian or intercolonial wars by means of land grants, and a precedent better known and of more general application was that set forth in the Royal Proclamation of 1763, which provided that grants of land should be made in America for officers and men who had served in the land forces there during the French and Indian War, while reduced officers of the navy would receive proportionate grants. The extent of these grants is of some interest. For a field officer five thousand acres would be granted, for a captain three thousand, a subaltern or staff officer would receive two thousand, a non-commissioned officer two hundred, and a private fifty acres. These grants carried with them ten years' freedom from quit rents. Under the terms of this proclamation great tracts were laid off in the royal provinces

New York, Virginia, the Carolinas and West Florida containing many of these bounty grants.[1] But it should be noted that the Proclamation of 1763 granted land after the services had been performed. The warrants could be located upon any unappropriated crown lands, no reserves being set apart, and the grants were especially favorable to the officers, a general receiving one hundred times the share of a private.[2]

The members of the Second Continental Congress, therefore, realized the value of land bounties, yet the first offer was not made to volunteers in the cause of freedom, but to foreign deserters from the royal standards. The resolution of August 14, 1776, was based upon a recent Act of Parliament inviting patriot troops to desert their standards. Congress, in turn, urged the Hessians and other foreigners to leave the service of the crown, promising them citizenship in the States and a grant of fifty acres of land "in some of these States."[3] The resolves were translated into German and some were printed on tobacco wrappers so that they might easily fall into the hands of the soldiers.[4] This first offer was not considered satisfactory, because no distinction was made between officers and privates, and as soon as Congress realized this it passed another resolve, on August 27,

1 Donaldson, 473, contains a survey of one of these grants.

2 Attempts were made to have some of these grants satisfied by the United States, but Congress refused to do so. P. L. I., 70, 165, 583; P. L. II., 103, 121.

3 J. V., 654.

4 J. V., 705n.

which corrected the error. To such foreign officers as would desert, suitable land grants would be given, with additional grants in proportion to the number of soldiers they might bring over with them.[5] The amount of land offered ranged from one thousand acres in the case of a colonel to one hundred acres for a non-commissioned officer. No statement was made in the resolution as to where this land was to be obtained. The Continental Congress owned no land, unless it succeeded to the crown lands of His Majesty. Fortunately there was no rush of Hessian deserters, so Congress was spared any embarrassment. Only one grant, apparently, was ever made under these resolutions, and that not until 1792.[6]

In September, 1776, Congress made an offer which was bound to require fulfillment.[7] At that time provision was made for enlisting eighty-eight battalions for the war. To such of the officers and men as continued in service until the close of the Revolution, or until discharged by Congress, and to the representatives of such as were slain by the enemy, certain lands were to be granted. This offer was relatively smaller than that to the deserters. Under it a colonel would receive five hundred acres, a lieutenant-colonel four hundred and fifty, a major four hundred, a captain three hundred, lieutenant two hundred, ensign one hundred

[5] J. V., 707.

[6] 100 acres granted by act of March 27, 1792.

[7] Sept. 16, 1776, J. V., 761.

and fifty, and non-commissioned officers and privates one hundred acres. The offer was guaranteed in the following words: "Such lands to be provided by the United States, and whatever expense shall be necessary to procure such lands, the said expense to be paid and borne by the States in the same proportion as the other expenses of the war."

Yet this provision could hardly have caused Congress much uneasiness. If the Revolution failed, there would be no demand for lands, while if it were successful, surely they could be provided. And there were some who believed that the States which had quantities of vacant lands would gladly make good the Continental warrants in order to place trained veterans upon their frontiers. At any rate, Congress had no occasion to worry about land bounties until the war came to an end in 1783.

In the meanwhile it had extended its grants to soldiers who had enlisted before the resolution of 1776;[8] it had declared assignments of bounty lands to be invalid;[9] it had increased the offers to foreign deserters;[10] it had extended the grants to general officers, a major-general becoming entitled to eleven hundred, and a brigadier-general to eight hundred and fifty acres;[11] and, finally, it had included the hospital department among those eligi-

[8] Sept. 18, 1776. J. V., 763.
[9] Sept. 20, 1776. J. V., 788.
[10] Apr. 29, 1778. J. X., 405.
[11] Aug. 12, 1780. J. III., 508.

ble to receive bounty lands.[12] No land was offered to chaplains.[13]

These offers of land to troops enlisting in the Continental Line for the war were not unanimously endorsed by the States. The irritating dispute between the landed and the landless States developed out of this very question. Congress had no land at its disposal, and if the pretensions of the States claiming the Western lands prevailed, then the bounty lands would have to be secured from them. These States would therefore secure inhabitants and money in return for waste land, while the landless States would have to pay their share of the purchase price and lose their soldier-settlers as well. Maryland, for example, proposed to substitute an offer of ten dollars instead of one hundred acres of land.[14] Congress warmly opposed this, because it might lead to a general demand for ten dollars from all the other recruits, and it was much easier to offer one hundred acres at the close of the war than to pay ten dollars in cash at the time. Maryland was assured that the land bounties would be satisfied by Congress and not by the individual States. The matter was settled as Congress desired, but Maryland turned her attention to the general question of the ownership of the Western lands.

At this time, also, Virginia, New York, Penn-

[12] Sept. 30, 1780. J. III., 531.

[13] Note application of a chaplain who had served eight years. J. IV., 807.

[14] J. VI., 912. Oct. 30, 1776.

sylvania, North Carolina, and Georgia offered land bounties to soldiers enlisting in the Continental or State "Lines." The State bounties were much larger than those offered by Congress. In New York privates were offered six hundred acres and officers a larger amount. These lands were later laid off in the northwestern part of the State. Pennsylvania offered a private two hundred acres and the officers an additional amount up to two thousand acres for a major-general, these lands being laid off in the northwest corner of the State. The Virginia bounties ranged from one hundred to fifteen thousand acres, those of North Carolina from six hundred and forty acres to twelve thousand. These offers were generally made only in the case of those enlisting for three years or for the war.

With the creation of the public domain came the ability to satisfy the land bounties. An early proposal was the so-called "financier's plan," introduced on June 5, 1783, by Theodorick Bland, and seconded by Alexander Hamilton. This motion provided for a large reserve in the proposed Virginia cession, which should be laid off into districts and divided into townships, and in which the land bounties were to be satisfied and all moneys due to the soldiers, in lieu of the commutation for the half pay and all other arrearages, were to be paid in land at the rate of thirty dollars for every dollar due. But as the Virginia cession had not been completed at this time, nothing came of this at-

tempt to quiet the demands of the soldiers for their land and money.

It was in the same month that the officers at Newburgh petitioned that their land bounties be laid off in a district corresponding closely to the later State of Ohio, and Washington warmly urged their request. But Congress, still waiting for the Virginia cession to clear up the title to the Northwest, announced that it could not at that time make any appropriations of land for the army, no matter how desirous it might be to accommodate the officers and soldiers. Yet when Congress had a free hand it did not hasten to afford relief to the veterans. The proposed land ordinance of 1784 would have permitted the receipt of military warrants for any surveyed land, and it contained a section concerning the evidence necessary to secure a military grant. As amended and passed, in 1785, it provided that before any of the surveyed land was drawn for sale in the States, one-seventh of the amount was to be drawn by lot for the benefit of the Continental Army, and these drawings were to continue as the surveys were extended, until the bounty claims were satisfied. Although these terms gave the soldiers a slight advantage over the ordinary purchasers, they could hardly have been considered satisfactory. The soldiers must now wait until seven ranges northwest of the Ohio had been surveyed, whereas they had been accustomed to a system which gave the claimant a warrant and permitted him to locate it

wherever unappropriated land might be found. In Virginia, New York, Pennsylvania, and North Carolina certain military reserves had already been set off,[15] in which the State warrants were to be satisfied and where the veteran could enter upon his lands almost at once. It was not until 1787 that any surveys were returned to Congress. In April, the Secretary of War was again authorized to draw the portion for the army,[16] but in October, on his recommendation, a military reserve was set apart in the Northwest.[17] This reservation called for one million acres in what is now the State of Ohio, and an additional tract in southern Illinois. But the worst feature of the resolution, from the point of view of the soldier, was the fact that it put off still further the day when the warrants would be made good. Some military warrants, however, were received in payment of the tracts purchased by the Ohio Company and by John Cleve Symmes; in these cases each acre called for by the warrants was received for one and one-half acres of land.[18]

The establishment of the military reserves was doubtless based upon the action of New York, Pennsylvania, Virginia, and North Carolina, which had designated military tracts when they had offered the bounties. As long as the warrants were

[15] The Pennsylvania reserve was opened in 1786; the New York reserve in 1789.

[16] J. IV., 739. The lands drawn were placed on sale in 1796.

[17] J. IV., 801.

[18] Ohio Company, 142,900 acres; Symmes, 95,250 acres.

not transferable, such a system would place upon the frontier a body of veterans—for the State and national reserves were all located on lands to which the Indian title had not at the time been extinguished. But in 1788 the national bounty warrants were rendered transferable,[19] and with that enactment all reason for a military reserve vanished. The amendment further provided that the warrants could be located in the two reserves, but only in combinations amounting to six miles square. The hostile attitude of the Indians northwest of the Ohio prevented the location of any of these warrants during the last years of the Confederation.

With the exception of the warrants received from the Ohio Company and Symmes, none of the bounties pledged the Continental soldiers had been satisfied when the Constitution went into operation.[20] By 1790 the Virginia reserve in Kentucky had been entirely appropriated and Congress threw open the Virginia reserve in Ohio, but it was not until 1796 that effective provision was made for the national bounties—almost twenty years after the promises were made and about thirteen years after the time when they could have been fulfilled.

The Act of June 1, 1796,[21] set apart a tract in

[19] July 9, 1788. J. IV., 833.

[20] A special act of Apr. 18, 1794, gave Ephraim Kimberly permission to locate his warrant for 300 acres on the tract which he was occupying on the west bank of the Ohio. Ebenezar Zane was permitted to turn in military warrants for the three sections granted him in 1796.

[21] June 1, 1796, ch. 46.

the Northwest Territory corresponding in the main with the Ohio reserve of 1788, although calling for twice as much land, which became known as the "United States Military District." Within this district the land was to be laid off into townships of five miles square, and quarter-township corners were to be marked. No school sections were reserved, although the salt springs were set apart. The land was to be granted only in quarter-township tracts, and for nine months after public notice in the several States and territories the Secretary of the Treasury was to register warrants to the amount of one or more tracts for any person or persons. At the expiration of that time the priority of the registered warrants was to be determined by lot and the persons holding the same were to make their locations before a specified date. A failure to locate within the given time caused one to lose any advantage in choice of locations. The lands in the reserve were to be released on January 1, 1800, "and all warrants or claims for lands on account of military services, which shall not, before the day aforesaid, be registered and located, shall be forever barred."

As the first effective act regulating the satisfaction of the military bounties this measure deserves some little consideration. It called for a military reserve rather than for the receipt of bounty warrants for any land open to sale. This, again, was due to the State precedents as well as to the reserves designated by the old Congress. There was

no good reason why the soldier should be forced to locate within certain limits, especially as the warrants were transferable. Within the reserve the rectangular surveys were to be made, but a change in the size of the townships was deemed necessary. The warrants called for tracts generally of a hundred acres or of a multiple of a hundred. A township of five miles square would contain sixteen thousand acres, or four thousand acres to each quarter. These divisions were better suited to satisfying the warrants than were those of a six-mile square township. Under the act of 1796 persons holding warrants for less than four thousand acres would have to combine their claims, for no tracts smaller than a quarter township were to be granted. Adjoining the United States reserve lay the Virginia reserve, and in the latter the Virginia system of indiscriminate locations was in force. The litigation which arose there over erroneous surveys and conflicting claims showed conclusively the value of the rectangular system in operation on every side.

One provision in the Act of 1796 soon proved futile. It was expected that all the warrants would be located by January 1, 1800, and that the unappropriated tracts could then be restored to the public domain. But it was absurd to think that every person entitled to a bounty warrant would secure it and locate it in so short a period. In 1799 the time limit was extended to January 1, 1802.

It was not until 1800 that the priority of location

was determined by lot and when this was decided another drawing took place to select fifty quarter townships for the satisfaction of outstanding warrants.[22] These tracts and the unlocated fractional townships were to be divided into hundred acre lots, and warrants could be located upon them up to January 1, 1802. But these hundred acre lots could only be located by the original holders of the bounty warrants, all assignees would still have to combine to secure a quarter township.[23] This act also made provision for the careless surveys run in the military tract by granting certificates when lots proved to be at least fifty acres smaller than estimated, and by insisting upon a payment in warrants or money for any excess.

After provision was made for satisfying the military warrants the next difficulty arose as to how to expedite the process. Congress had delayed long in providing the land for the warrants, should it act hastily in satisfying them? From every point of view the warrants should be redeemed as soon as possible. Government should not retain great tracts of unoccupied land in the new State of Ohio nor should persons be allowed to delay their locations until others had settled and improved the surrounding region. The War Office was destroyed in 1801 and the loss of the records caused considerable trouble to the officials and to the warrant seekers.

[22] Mar. 1, 1800, ch. 13. The unreserved lands were attached to the Chillicothe and Zanesville districts in 1803.

[23] This restriction was removed in 1802.

By the end of that year it was reported[24] that warrants had issued to the estimated amount of 1,612,605 acres, of which 552,605 remained unlocated. From that time Congress continued to extend the period for obtaining warrants and perfecting locations. Twenty-six acts were passed between 1799 and 1864 of this nature, finally the issue of warrants ceased on June 25, 1858, and these could be located at any time according to the Act of July 2, 1864.

Each year several hundred claims were presented and a small proportion were approved and warrants were issued. From 1803 to November, 1824, some 1070 warrants for 156,500 acres were issued.[25] In 1825 it was reported that there were fifty-nine warrants in the war office which had been issued under Generals Knox and Dearborn, as Secretary of War, and which had not been called for.[26] In order to expedite the issue of warrants the Judiciary Committee of the Senate recommended in 1828 that a list of the officers and soldiers who had not applied for their warrant be printed.[27] This was done, and the list may be found in the State Papers, as well as the list of unclaimed warrants. A similar resolution in the House was defeated on the ground that such a publication would incite speculation in bounty lands.

It was not until 1830 that the military reserve in Ohio was finally given up. In March of that year

[24] P. L. I., 114.
[25] P. L. IV., 30.
[26] P. L. IV., 428.
[27] P. L. V., 360.

it appeared that only 35,627 acres remained unlocated among the fifty quarter townships, while it was evident that unlocated warrants would more than equal that amount.[28] An act was passed appropriating scrip, receivable for lands in Ohio, Indiana and Illinois, for the satisfaction of both the United States and the Virginia military warrants.[29] In 1832 the unlocated lots in the United States reserve in Ohio, some 31,900 acres, were ordered to be sold.[30] The next year the certificates were made receivable for any public land open to private entry,[31] and on September 1, 1835, the exchange of warrants for scrip ceased.[32] The issue of warrants continued until January 1, 1840, so that between 1835 and 1840 it was possible to secure a warrant without the right to satisfy it. Between 1840 and 1842 no warrants could be issued—as had also been the case between 1830 and 1832—but on July 27, 1842, an act was passed which continued the issue of warrants for five years and permitted all outstanding warrants to be located on any land open to private entry, but the certificates of location were not assignable and the patents were to issue to the person originally entitled to the bounty or to his heirs or legal representatives. As has been pointed out the issue of revolutionary warrants was again twice extended and the right to locate them was granted without limit of time.

[28] P. L. VI., 167.
[29] May 30, 1830, ch. 215.
[30] July 3, 1832, ch. 163.
[31] Mar. 2, 1833, ch. 94.
[32] Mar. 3, 1835, ch. 30. Certificates for 97,750 acres issued up to Nov. 15, 1834. P. L. VII., 327.

Until 1855 Congress was concerned with the satisfaction of the pledges of the Continental Congress, but in that year and in 1856 it passed acts which rewarded services in the Revolution hitherto unrecognized. This increase in the Revolutionary bounties can best be discussed in connection with the later bounty legislation.

In satisfaction of the original Revolutionary bounty pledges the United States issued land warrants for 2,666,080 acres prior to July 1, 1907. In addition to this was a small amount issued under the acts of 1855 and 1856 as well as certain warrants issued under special acts of Congress. In any case the total was somewhat more than half as much as Congress had been called upon to appropriate for the troops of Virginia, in addition to the lands granted them in Kentucky. Land grants arising out of Revolutionary services were also made to General Lafayette and to certain Canadian refugees, but as these were special grants they have been discussed in another chapter.

It might be an interesting study to determine how many of these warrants were located by the original holders and to study, if possible, the influence of these veterans on the frontier. A great proportion of the warrants, however, were assigned and many of them fell into the hands of speculators, and even to-day it is possible to take up land under a Revolutionary warrant issued before 1858 or to secure a warrant for Revolutionary services, under the Act of 1855. During the existence of the mili-

tary reserve the presence of so much cheap land in Ohio affected the sales of public lands at the neighboring land offices. In that district the bounty lands did not receive the exemption from taxation for a term of years which applied to lands sold by the United States or to lands in the later military reserves. The lack of this provision caused many patented tracts to be sold for taxes and made persons delay their location until they were ready either to occupy or dispose of their land.

The experience of Congress with the Revolutionary bounty lands should have taught it the weakness of most of the arguments in favor of land grants for military service. The soldiers, in general, returned to their own homes and accustomed habits and few of them took any interest in lands in the wilderness except to assign their warrant, for a nominal consideration, to some restless settler or visionary speculator. The military reserve, therefore, instead of being peopled with hardy veterans contained large unoccupied tracts, while its cheap lands impaired the sales of the public domain. The only effective argument in favor of granting land was that it was a cheap way to pay bounties, yet this argument was economically untenable. The nation would have been the gainer could it have paid cash for its bounties and then have permitted the public lands to be uniformly disposed of. The valuable pioneer would have crossed the mountains without the incentive of a land grant, and each soldier would have received the entire value of his

bounty, which did not follow when he assigned his land warrant.

Before these ideas could receive general recognition the prospect of a second war with Great Britain caused a renewal of the system of land bounties. In 1798, when trouble with France caused a considerable increase in the standing army, no land bounties were offered, but in 1811 the influence of the West was more keenly felt in Congress and western members uniformly supported any measure which even indirectly tended to the peopling of their section. The Act of December 24, 1811, was designed to complete the existing military establishment, and it offered a bounty of sixteen dollars on enlistment for a term of five years while on an honorable discharge the soldier was entitled to three months' pay and a quarter-section of land. Should he die or be killed in service his heirs or legal representatives would receive the bounty in cash and land. Similar terms were inserted in the Act of January 11, 1812, raising an additional force, while the Act of February 6, only made provision for the heirs, as the service of the volunteers under this act was only for twelve months. In 1813 and 1814 similar bounties were offered troops who might enlist for five years or for the war,[33] and in December, 1814,[34] the bounty was doubled for all enlistments after that act, but state troops and volunteers accepted under the later

[33] July 5, 1813, ch. 4; Jan. 28, 1814, ch. 9; Feb. 10, 1814, ch. 10; Feb. 24, 1814, ch. 16.

[34] Dec. 10, 1814, ch. 10.

act of January 27, 1815, were to receive only a quarter section.

Some general provisions of these bounty offers should be noted. The bounty lands were only offered to "effective able-bodied men" between the ages of eighteen and forty-five, and only privates and non-commissioned officers could receive them. If the Revolutionary bounties were more democratic than those offered by the Proclamation of 1763 and in proportion granted far more land to privates than to officers, then these bounties for the Second War registered the further development of American democracy. No officer could receive bounty lands. If a private should receive a commission for meritorious service he must give up all thought of a quarter section in the distant west. The theory, of course, was that the officers received ample remuneration in pay and incidentals and that they would not need a tract of land in which to start life anew, nor would a land offer be necessary to secure a complement of officers. Another feature, open to even more criticism but fully as proper, was the restriction of the bounty to troops serving under national authority, yet immediate demands were made that the militia and irregular volunteers should receive bounties. Of course the doubling of the bounty in the last months of the war was manifestly unjust to the veteran troops, although it was doubtless necessary in order to secure recruits.

When Congress made provision for satisfying

these bounty warrants it retained the system of military districts. In 1812 the President was authorized[35] to have surveyed a quantity of public land "fit for cultivation, not otherwise appropriated, and to which the Indian title is extinguished." Six million acres were to be set apart in equal portions in the territories of Michigan, Illinois, and Louisiana. These lands were to be divided into quarter sections, and salt springs, lead mines, and school sections were to be reserved. The warrants must be applied for within five years after a person became entitled to one,[36] then he must designate the territory in which he preferred to locate and the quarter section would be drawn by lot. This act contained strict provisions intended to protect the soldiers in their lands. Warrants were not assignable and the land could not be transferred in any manner until the patent issued. "All sales, mortgages, contracts, or agreements, of any nature whatever, made prior thereto, for the purpose, or with intent of alienating, pledging or mortgaging any such claim, are hereby declared and shall be held null and void; nor shall any tract of land, granted as aforesaid, be liable to be taken in execution or sold on account of any such sale, mortgage, contract or agreement, or on account of any debt contracted prior to the date of the patent, either by the person originally entitled to the land or by

[35] May 6, 1812, ch. 77.

[36] This time limit was extended by ten acts until the terms were similar to those for Revolutionary warrants.

his heirs or legal representatives, or by virtue of any process, or suit at law, or judgment of court against a person entitled to receive his patent as aforesaid."

This act carried with it no appropriation to pay for the surveys of the military districts.[37] It was not until 1815 that money was voted for that purpose and the next year President Madison reported to Congress that the lands set apart in Michigan were covered with lakes and swamps and were unfit for cultivation, and he recommended that other reserves be made.[38] At the same time the Adjutant-General estimated that 68,500 men were entitled to bounty, which at 160 acres each, would amount to 10,960,000 acres. Congress acted on the suggestion of the President and in lieu of the Michigan lands set apart an additional 1,500,000 acres in Illinois and 500,000 acres in Missouri Territory north of the Missouri River.[39] The lands reserved in Louisiana Territory by the act of 1812 lay between the St. Francis and the Arkansas rivers and were in the later state of Arkansas.

The war was scarcely over than attempts were made to widen the scope of the bounty laws. In 1815 a proposition was discussed in favor of grant-

37 Annals, 1814-15. 1153, 1172.

38 Governor Cass, of Michigan Territory, protested against this erroneous report of the surveyors. A. C. McLaughlin, in Papers of the American Historical Association, III, 67-83.

39 April 29, 1816, ch. 184. By the act of April 16, 1816, ch. 55, an additional two million acres were set apart, but this reserve was never made.

ing bounties to militia,[40] while a warm debate arose over a resolution proposing grants to deserters from the British armies.[41] The next year Congress passed one of those ill considered acts which continually crept into the statutes. This act was for the benefit of certain Canadian volunteers who, although citizens of the United States, had been residents of Canada at the outbreak of the war and had volunteered in the American forces. As a result of this patriotic action they had, of course, lost their possessions in Canada and it was held that the nation should make some compensation for such sacrifices—the compensation to be in land because there was more land than money available. The bill as introduced proposed to make the grant in proportion to the loss suffered, but this called forth amendments to include all our own residents who had lost property during the two wars with Great Britain. Then the bill was amended to offer grants in proportion to the rank held in the army, and an unsuccessful attempt was made to include all the inhabitants of Canada who took up arms for the United States. It was at once pointed out that this amendment meant the giving of land to Canadian officers when we denied it to our own, and others showed that the bill, instead of making compensation for property losses, simply rewarded military service, and a private might have lost more property than a colonel.

As finally passed the act offered land grants to

[40] Annals, 1814-5, p. 1189. [41] P. 326-333.

citizens of the United States who, though being inhabitants of Canada, joined our armies as volunteers.[42] The grants were graded as follows, to a colonel, 960 acres; major, 800 acres; captain, 640; subaltern, 480; non-commissioned officer, musician, or private, 320 acres. These lands were to be located in Indiana Territory. The act contained no restriction as to the nature or length of service, nor was the assignment of warrants prohibited. It was at the next session that Congress realized its error. Then a select committee of the House reported that the Act of 1816 was vague and defective, no specific terms of service were required and frauds had been attempted.[43] "In referring to the muster roll of the corps called Canadian volunteers, it appears to have consisted of nearly the full number of field and staff officers for a regiment, with a very small number of privates—not at any time exceeding thirty-eight mustered as present—and that very little service could have been rendered by them to the government." Congress at once tried to correct its error.[44] It required six months service in some corps of the United States army, it cut the bounties in half, and required that in the future they should be located on land that had been offered for sale. These acts remained in force but one year, and under them some 76,592 acres of land were granted.[45]

[42] March 5, 1816, ch. 25. [43] Annals, 1816-7, p. 463.

[44] March 3, 1817, ch. 106.

[45] Donaldson, 236. In 1836, Abraham Forbes, a spy, received 320 acres as a Canadian volunteer. P. L. VIII., 342.

At the very session in which the first of these acts was passed Congress twice refused to grant land to our own officers. The bill making further provision for military services during the late war contained grants for disbanded officers of the regular army, but after a long debate in the House this provision was rejected by a vote of seventy-four to sixty.[46] Another bill designed to grant land to disbanded officers of the regular army who had been wounded in battle and to officers and privates of the militia and volunteers who had been wounded, was also rejected. In such cases a grant of money would doubtless have been more acceptable. Year after year petitions were presented to Congress on behalf of the commissioned officers of the War of 1812, but not until 1850 did they receive any land bounties.[47]

The first extension of the terms of the bounty acts for the War of 1812 was based in large measure upon a very striking petition. Abigail O'Flyng presented the following facts to the consideration of Congress: that her husband had served in the late war, but as he was over forty-five years of age he could receive no bounty lands; her youngest son had served, but he had been under eighteen; two other sons had died in the service, but one had been promoted to a lieutenantcy and the other had been promoted to the rank of ensign.[48] Altogether this

[46] Annals, 1815-6, 979-996.

[47] Petitions were presented in 1815, 1817, 1826, 1827, 1828, 1830, 1831, etc. P. L. VI., 303-6.

[48] Annals, 1815-6, p. 846.

family, with so notable a record for patriotism, had received no part of the land bounty of the nation. Congress made amends, however, by granting Abigail and her husband four hundred and eighty acres of land and half pay for five years for each of their deceased sons, while one hundred and sixty acres were granted to the youngest son.[49]

The general act which was passed at this session covered the points raised in Abigail O'Flyng's petition.[50] Hereafter soldiers under eighteen and over forty-five years of age and those who might have been promoted to be commissioned officers were to receive the land bounty, moreover children under sixteen, heirs of persons entitled to warrants, might surrender them for five years half pay.[51]

This bill was reported on January 16th and Mrs. O'Flyng's petition was presented on February 1st, but the bill was not passed for several months and it is not unreasonable to suppose that the petition, which pointed out so convincingly the very defects in the former legislation, must have had considerable influence.

From this time until 1842 no changes were made in the laws governing bounty lands for services in the second war with Great Britain although many attempts were made to extend the bounty to commissioned officers, to the various bodies of volunteers, militia, and rangers which served in the states or on the frontiers, and even to the masters of

[49] April 24, 1816. [50] April 16, 1816, ch. 55.

[51] Two other acts continued this privilege to March 3, 1822.

slaves who had enlisted.[52] After 1826 several acts permitted persons who had drawn land unfit for cultivation to select lieu land,[53] and during the period two measures were discussed which would have favored the ex-soldiers. In 1818 a bill for the commutation of land warrants at one dollar an acre came within two votes of passing in the House.[54] This measure was advocated because it would free the soldiers from the speculators and also protect the general land system, but the expense involved apparently defeated the proposal. Two years later an effort was made to have scrip issue instead of warrants. Cook, of Illinois, presented the resolution.[55] He maintained that the reserves were inexpedient, that they were so remote that the soldiers would not move to them and in their poverty were forced to sell their lands to speculators. He believed a soldier would prefer eighty acres in scrip, locatable anywhere in the public domain, to one hundred and sixty acres in the reserves. Moreover the reserves were turning a large part of Illinois into a wilderness, and he held that "the bounty of the government, owing to the manner of conferring it, has thus done but little good to the soldier and established a nuisance in that flourishing state." The House refused to consider the resolution. At the next session a House committee favored the proposal to give scrip for half the amount of the bounty, for the reasons Cook had urged.[56] It was

[52] P. L. VI., 644, 969. P. L. VII., 572.

[53] Acts of 1826, 1830, 1840, 1853.

[54] Annals, 1817-8, p. 816.

[55] Annals, 1819-20, p. 1489.

[56] P. L. III., 493.

not, however, until 1842, that warrants could be located upon any of the public lands subject to private entry.[57]

After the military districts were abandoned it was still advantageous for the soldier to locate in Illinois, Missouri, Arkansas or Michigan because by the compacts entered into between these states and the nation they agreed to exempt bounty lands from all taxation for three years after the date of the patents. This exemption only applied to the patentees and their heirs.

With the breaking out of the war with Mexico in 1846 Congress once more offered land as a bounty for services in our forces. But the experience of the past years had been of some value and the new offer[58] differed materially from the old ones. It applied to non-commissioned officers, musicians and privates: those who served twelve months or more were to receive one hundred and sixty acres and those serving a shorter period were to receive forty acres. The principle of commutation was also introduced, for the soldiers might exchange their warrants for six per cent. scrip receiving one hundred or twenty-five dollars in either of the above cases. No military districts were set apart, for this method had been abandoned. The warrants were unassignable and were only to issue, in the case of volunteers, to such as were actually marched to the seat of war. A second act was

[57] July 27, 1842. [58] Feb. 11, 1847, ch. 8.

required to provide bounties for privates and non-commissioned officers who might later obtain commissions.[59] Congress wisely refrained from setting any time limit upon securing warrants and making locations, for it had been forced repeatedly in the past to extend these periods.

From this time bounty land legislation was not concerned with the separate wars but tended toward inclusiveness, each great act covering several wars. The first of these acts, that of 1850, was of wide application.[60] It offered land bounties to officers and privates, in the service of the United States, whether of the regulars, volunteers, rangers, or militia, who served in the War of 1812, or in any of the Indian wars since 1790; to commissoned officers in the war with Mexico; and to the widow or minor children of the above. To those who engaged to serve twelve months or for the war, and actually served nine months, one hundred and sixty acres were granted; those engaged for six months who served four months, were to receive forty acres. No grants were to be made to deserters, or to those who had already received bounty lands, and the warrants were not assignable.

This act met most of the demands of the past fifty years, yet its terms were still further enlarged.[61] In 1852 all bounty land warrants issued or to be issued were made assignable, and soldiers of the state militia or volunteers serving since the

[59] May 27, 1848, ch. 49. [60] Sept. 28, 1850, ch. 85.
[61] March 22, 1852, ch. 19.

commencement of the War of 1812, whose services have been paid for by the United States, were offered bounty lands as under the Act of 1850. In computing the length of service an allowance of one day was made for every twenty miles marched to the place of muster or from the place of discharge, provided such march was under proper orders.

More extensive in its operations than the Act of 1850 was that of 1855.[62] This act apparently covered every possible phase of military service under the national government. It applied to all classes of officers and men in the army and navy in any war since 1790—militia, volunteers and the troops of any state or territory called into service and paid for by the United States, wagon-masters, teamsters and chaplains. Officers and men of the Revolutionary army were included, as were the volunteers at King's Mountain (1780), at Nickojack "against the confederated savages of the South" (1794), at Plattsburg and at Lewistown, Delaware, in the War of 1812. To secure this bounty of one hundred and sixty acres, a service of fourteen days or participation in a battle was necessary. Widows and minor children of deceased claimants were entitled to the bounty lands and Indians might share the benefits of the act.[63] The next year this act was further extended to include the officers and men of the Revolutionary navy and volunteers

[62] March 3, 1855, ch. 207.

[63] These warrants were made assignable in 1858.

who had served fourteen days in any of the specified wars whether regularly mustered into the service of the United States or not.[64] Where a warrant had already issued for less than one hundred and sixty acres the balance might now be obtained. Where no written evidence of service existed parol evidence might be accepted, although even if a warrant had formerly been granted the Commissioner of Pensions might demand further evidence of the services in question.

In 1857 provision was made for the officers and soldiers of Major David Bailey's battalion of Cook County, Illinois, volunteers, who served in Black Hawk's War.

A study of the bounty land legislation since 1850 leads one to believe either that Congress had become wonderfully appreciative of military service or else had become magnificently lavish in its grants of the public domain. One hundred and sixty acres of land for fourteen days' service—surely that showed appreciation of militant patriotism. And yet the act was but the culmination of a series of bounty grants. It placed every possible service in the past upon a common footing, and left the way open for new legislation in the future. These acts wiped out many of the inequalities of the old laws. Officers now received lands, although not in the large quantities granted to those of the Revolution. The navy was placed upon the same terms

[64] May 14, 1856, ch. 28.

as the land forces, although in the case of the Revolutionary officers they failed to fare as well as their comrades ashore. And then the various bodies of militia, volunteers, and rangers, which performed feats of varying importance, were uniformly rewarded.

As to the short term of service required for a grant, it is difficult to see how Congress could have drawn the line. The volunteers who flocked to the support of Jackson at New Orleans accomplished more than did many of the troops who served for years along the northern border,[65] and the frontiersmen who crossed a wilderness to crush the raiders at King's Mountain were of invaluable assistance to the young republic. The whole theory of land bounties had gradually changed. When first used by our government they were designed to secure enlistment for the entire war in order to build up a permanent force, but gradually the idea developed that they were more of a reward for services rendered and in that case the men who picked up their muskets for a few days of critical fighting were more deserving than the standing forces which lay in garrison during much of their period of enlistment. So if the acts favored many who deserved little of the nation, they were also of service to the men who, fighting the daily battles of the frontier, were unable to enlist with regular troops for the terms prescribed by the earlier bounty laws.

[65] Petition of Beale's Rifle Company, at New Orleans, Dec. 23, to Jan. 8, 1814. P. L. VIII., 328.

Under the Act of 1856, which authorized the issue of warrants to satisfy any deficiency in previous grants, new sizes of warrants were issued. An ensign in the Revolution had received one hundred and fifty acres, he now was entitled to a warrant for ten acres. A Revolutionary private had received one hundred acres, sixty acres were now his due. Certain soldiers of the Mexican War had received forty acres, now one hundred and twenty in addition were forthcoming. Almost as much land was granted under the Act of 1855 as under all other national bounty acts.

Military services since March 3, 1855, have not been rewarded with bounty lands. At the commencement of the Civil War the rush of volunteers made land bounties unnecessary and in 1862 the Homestead Law gave to anyone a home who might seek one and so rendered that argument valueless. When troops were really needed a system of cash bounties was used, better in almost every way than the land bounties of the earlier period.

The total amount of land granted for military services has already reached about seventy million acres. The extent of the grants has been due to the great wealth of land of which Congress has been the trustee. And yet the giving of land was more expensive than it appeared. These millions of acres were surveyed at the expense of the nation and the land revenue suffered for every warrant issued. It would have been better to have given bounties in cash rather than in lands, the soldier

would have been freed from the speculator and the general system of land sales would not have come into competition with bounty lands which generally sold below the minimum price. Neither the soldier nor the nation received the maximum of benefit from the system.

BOUNTY LAND WARRANTS ISSUED AND LOCATED TO JUNE 30, 1907

	WARRANTS ISSUED.		WARRANTS LOCATED.	
	Number	Acres	Number	Acres
War of the Revolution, acts prior to 1800	16,663	2,666,080		
War of 1812, acts prior to 1850:				
160 acres	28,085	4,493,600	27,979	4,476,740
320 acres	1,101	352,320	1,034	330,880
	29,186	4,845,920	29,013	4,807,520
Act of 1847:				
160 acres	80,689	12,910,240	79,202	12,672,320
40 acres	7,585	303,400	7,105	284,200
	88,274	13,213,640	86,307	12,956,520
Act of 1850:				
160 acres	27,450	4,392,000	26,913	4,306,080
80 acres	57,717	4,617,360	56,476	4,518,080
40 acres	103,978	4,159,120	101,001	4,040,040
	189,145	13,168,480	184,390	12,864,200
Act of 1852:				
160 acres	1,223	195,680	1,196	191,360
80 acres	1,699	135,920	1,668	133,440
40 acres	9,070	362,800	8,895	355,800
	11,992	694,400	11,759	680,600

Act of 1855:				
160 acres	115,616	18,498,560	111,019	17,763,040
120 acres	97,088	11,650,560	91,275	10,953,000
80 acres	49,490	3,959,200	48,414	3,873,120
60 acres	359	21,540	317	19,020
40 acres	542	21,680	470	18,800
10 acres	5	50	3	30
	263,100	34,151,590	251,498	32,627,010
Summary:				
War of the Revolution, acts prior to 1800	16,663	2,666,080		
War of 1812, acts prior to 1850	29,186	4,845,920	29,013	4,807,520
Act of 1847	88,274	13,213,640	86,307	12,956,520
Act of 1850	189,145	13,168,480	184,390	12,864,200
Act of 1852	11,992	694,400	11,759	680,600
Act of 1855	263,100	34,151,590	251,498	32,627,010
	598,360	68,740,110		

CHAPTER XI

LAND GRANTS FOR EDUCATION

Any study of the system of Federal land grants for education which only covers the period from 1785 to 1820 must be considered a study of origins, for although the system had been well established by the latter date it was many years before it reached its highest development. In the chapter dealing with military bounty lands it seemed desirable to carry the discussion to the present time, for practically no important changes in the bounty laws have taken place in the past fifty years. But in the case of the land grants for education the system developed largely in the period after 1820, the school grants being doubled after 1848 and the grants for higher education increased and extended in 1862. A study of this development involves an understanding of the development of the general land legislation of the period and as such a discussion is quite beyond the scope of this work it will be necessary to limit the treatment of this special topic to the period embraced in the general study.[1]

[1] For colonial precedents see Schafer, The Origin of the System of Land Grants for Education, Bulletin of the University of Wisconsin, No. 63, 1902. For a study of the management of the land grants in the Northwest Territory, see Knight, History and Management of Federal Land Grants for Education in the Northwest Territory, Papers of the American Historical Association, Vol. I., 1886. For the operation of the system in other states see the circulars of information, Bureau of Education, 1890 and 1891.

It is hardly necessary to dwell upon the colonial precedents for land grants for educational purposes. They were important features of the New England land system, and New England men early suggested that these grants be carried over into the Federal system. The officers at Newburgh who petitioned for land in 1783 desired that reserves be made for education and for the ministry, and of the two hundred and eighty-five petitioners all but fifty were from New England. Bland's proposal of the same year indicated seminaries of learning as a proper object of expenditure for the land revenue. Knowing the liberal ideas of Jefferson on all questions of education it is surprising that no provision for land grants was made in the proposed land ordinance of 1784, which he so largely drew up. Gerry and Howell, who represented Massachusetts and Rhode Island on the committee, must have suggested the New England custom of granting land for education and religion, but whether the three southern members objected to supporting a system new to them, or whether the members generally questioned the right of Congress to devote any portion of the public domain to such purposes, will probably never be known. At any rate the proposed Ordinance was criticized in New England because of its omission of reserves for schools and religious purposes.

The history of the Ordinance of 1785 has already been given. As adopted, only the reserve of section sixteen in each township for schools was retained,

the reserve of an additional section for religious purposes being struck out by a close vote. And there is reason to believe that the grant for education was not wholly disinterested upon the part of Congress. It was not made so much to encourage education as to stimulate the land sales, if the statement of the man most influential in drafting the Ordinance is to be accepted. The New England members doubtless voted for it because of their knowledge of the value of the system of state aid, but the southern members just as probably accepted Grayson's opinion, "that the idea of a township, with the temptation of a support for religion and education, holds forth an inducement for neighborhoods of the same religious sentiments to confederate for the purpose of purchasing and settling together." [2] If there had been a larger representation in Congress the reserves for "religion" would undoubtedly have been made. Congress had decided that the modified system of township-planting was best adapted for the sale of the public domain, and reserves for "religion" were features of that system in New England. No question was raised as to the right of Congress to make the educational reserves. Years afterwards such grants were criticized as violations of the Virginia deed of cession, but in 1785 Virginians seemed to consider them a "bona fide" disposition. They were a "temptation," an "inducement," to settlement, and they were offered by the Federal government

2 See p. 31.

much as any other great land owner might make such concessions.

In 1787 three acts tended to confirm the system of national land grants for education. First came the general provision in the Ordinance of 1787 that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Then came the instructions of Congress to the Board of Treasury concerning the proposed sales to companies of land in the Northwest.[3] These authorized the grant, in the tract under discussion, of every section sixteen for education and every section twenty-nine for the purposes of religion, as well as the grant of two townships for a university. And finally came the incorporation in the constitution of the clause giving Congress unlimited power over the public lands.[4]

Congress was, however, by no means committed to the policy of land grants for education. The Ordinance of 1785 only applied to the Seven Ranges which were surveyed under it. In the purchases of the Ohio Company and of John Cleve Symmes there were school reserves and a university grant was reserved in the former,[5] but for the rest of the Northwest no provision was made, and with the establishment of the new government it seemed

[3] J. IV., app. 17. [4] Art. IV., section 3, paragraph 2.

[5] A township for a university was granted in the Symmes purchase in 1792.

as if Congress was bent on rejecting the liberal precedents of the old Congress. This is evident from a study of the legislation of the first few Congresses. Hamilton failed to recommend school reserves in his report of 1790 and no provision was made for them in the bill which passed the House in 1791. When the Virginia military tract was set apart in 1790 no part of it was reserved for schools nor were they provided for in the United States military district. The inhabitants of these regions would need schools as much as any of the Western people, but as the lands there were not to be sold a grant of school lands could not acclerate the sale. Possibly under these circumstances a grant of lands for schools was not considered a "bona fide" disposition of the public domain.

In 1796 and 1800 Congress passed acts for the sale of lands in the Northwest. Every reason for the educational grants which could be presented in 1785 still held—but one. In these acts Congress abandoned the system of township-planting, and apparently it abandoned the educational grants which were a part of that system. No effort seems to have been made to incorporate land grants in these acts, although Congress was well aware of the grants under the old Congress. In fact it extended one of those grants, for in the case of the Symmes purchase it reserved the sixteenth section not only in the tract which he eventually purchased, but in the entire tracts which he first bargained for. This, however, was really a small concession, and it

looked as if the central government had finally decided to offer no further aid to education.[6]

But such was not to be the case, and within two years from the negative Act of 1800 Congress had taken steps toward placing the land grants for education upon the surest of foundations. It was the "act to enable the people of the eastern division of the territory northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," which restored the educational land grants to the Federal land system.[7] The Ohio Enabling Act and its modification are discussed in other connections. Here it is simply of importance to note that the grant of the school sections, the salt springs, and the five per cent. fund were all offered to Ohio on condition of her agreeing to exempt from all taxes the lands sold by the United States

[6] The attention of Congress was called to this question through the following petitions, etc. In 1799 the inhabitants of Mississippi Territory prayed for an appropriation for schools and religion similar to those in the Northwest. A committee of the House considered it inexpedient to grant this request. Annals, 1799-1801, 153. On December 18, 1800, a committee of the House was appointed to report on the lands reserved for schools and religion in the Northwest, id. 836. On January 24, 1800, a petition of settlers between the Scioto and Little Miami rivers for land for an academy, was presented. id. 425. On January 2, 1801, a petition came up from Wayne County, Northwest Territory, for school lands and a township for the support of the Gospel, id. 875. In 1802, Wayne County desired land for a college, Vincennes wanted a grant for Jefferson academy, and Fairfield County wanted two sections in each township for seminaries. Annals, 1801-2, 949, 497, 508.

[7] April 30, 1802, ch. 40.

for five years after the date of sale. On no other ground could the grants be explained. Some members of Congress held that the grants would enhance the value of the remaining public lands but that would not account for the grant of school lands for the Connecticut Reserve and the two military districts in which no lands were being sold by the United States. The House Committee in 1803, based the grant of school lands upon the precedent in the Ordinance of 1785, but as even that could not cover a grant of school lands in a district not subject to Federal sale, the Committee dwelt upon the desirability "of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits." [8]

As a matter of fact Congress could have granted the school lands to Ohio without any condition at all, under its unlimited power over the public lands, but it is doubtful if at the time a majority in Congress would have consented to override the terms of the Virginia cession and the pledge of the proceeds of the land sales to the public debt. It is a pity, therefore, that Congress had to clothe so promising a grant in the form of a bargain. It would have been a far nobler act if the preamble had quoted the appropriate sentence of the Ordinance of 1787, that "religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged," and had

8 Misc. I., 340.

made the grants in fulfillment of that promise. If some quid pro quo was necessary for the tax exemption it could have been arranged in some other way. But this was not done, the school lands were made one of the items in the compact, and a troublesome precedent was created which caused the tax exemption feature to be retained even after the system of credit sales, which caused its introduction, was abolished.

The first enabling act stated "that the section, number sixteen, in every township, and where such section has been sold, granted or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools." The Ohio convention questioned the general nature of this clause and insisted upon a more definite grant. This was really necessary because of the great tracts in Ohio which had already been disposed of. So in the modifying act of 1803 Congress specified certain quarter townships in the military tract "being the one thirty-sixth part of the estimated whole amount of lands within that tract," which were reserved for the schools in that district; in the same tract other quarter townships were reserved for the use of schools in the Connecticut Reserve; for the Virginia military reserve the school lands were to be selected by the state from the unlocated lands, but the total was not to exceed one thirty-sixth of the area nor to exceed the residue of the unlocated lands even if they fell short of the requisite amount;

and finally the state was granted one thirty-sixth of all lands to be purchased from the Indians, the same to be the sixteenth section in every township six miles square, and shall "if the lands be surveyed in a different manner," be designated by lots. This act also permitted the Secretary of the Treasury to select lieu lands from the nearest unappropriated reserved sections for any section sixteen which might have been disposed of, and it granted to the State a township of land to take the place of the one granted to Symmes but never located.

This act was considered satisfactory at the time, although it failed to provide land for some of the townships. The western half of the Connecticut Reserve was not ceded by the Indians until 1805, and it was not until 1834 that Congress permitted the selection of the school lands for this region in the State at large.[9] Under the act no lands were to be selected for schools in the Virginia military reserve until after all the bounty warrants had been located. As Congress kept extending the time for the location of the warrants and as the issue of warrants kept increasing it began to be very doubtful if there would be any land left for the schools. Congress therefore, in 1807, authorized the grant of eighteen quarter townships and three sections in the lands ceded by the Indians in 1805.[10] Again, in 1826, Congress granted eight hundred acres for the schools within the Gallipolis grant of 1795.[11]

[9] June 19, 1834, ch. 56. [10] March 2, 1807, ch. 21.
[11] May 20, 1826, ch. 83.

With these acts the Federal grants for schools in Ohio were completed.

The Ohio enabling act established the necessary precedent for future educational grants. After this time Congress would reserve school and seminary lands during the territorial period and then vest them in the State on its admission into the Union in consideration of the tax exemption already noted. The first act reserving these lands was that for the region south of Tennessee, in 1803, where a township and certain lots near Natchez were also reserved for Jefferson College. The next year provision was made for the sale of lands in Indiana Territory, and the school sections and three townships for seminaries were reserved. These townships were located in the three land districts which later became the States of Indiana, Illinois, and Michigan. From that time there has been a long series of acts reserving the lands for education as new land districts were erected or Indian cessions were ordered to be surveyed.

Of a different nature was the first grant of lands for education in Tennessee. The conditions in that State were exceptional so the normal course of developments could not be followed.[12] In theory Tennessee was a public land State, but in 1806 the United States had not granted an acre of land, although practically all the good land outside the Indian boundaries had been appropriated under

[12] See chap. 13.

North Carolina warrants. Tennessee, moreover, was a sovereign State, having been admitted in 1796. At that time the school grants had not been accepted as a part of the enabling acts of public land states, and as the Ordinance of 1787 had been extended to the region which became the State of Tennessee its compact was believed sufficient to protect the right of the United States to the lands in that State. So, after the admission of Tennessee, North Carolina continued to perfect her former grants within that State, while the United States did not deem it advisable to commence disposing of the public lands until the North Carolina claims were all satisfied. Moreover Tennessee believed that she had certain rights in the lands within her limits. The question was settled for the time by the Act of 1806 by which the United States ceded to Tennessee the eastern two-thirds of the State on condition of her giving up all claims to the remaining lands and of agreeing to exempt the latter from all taxes for five years after sale. But the United States made further conditions to the effect that Tennessee should perfect all outstanding North Carolina titles, and appropriate certain lands for schools, academies, and colleges. Being based on a tax exemption these land grants were like those of the enabling acts, but they were made to a state already in the union, they rose out of exceptional conditions, they were uncertain in amount, and actually amounted to very little.

Another deviation from the regular system of

land grants for schools was made in the case of Louisiana. The presence there of so much land held under foreign titles or claims interfered with the existing system of reserving the school sections before the land was placed on sale. In 1805 a memorial came up from the Legislature of the Territory of Orleans praying for educational grants, and a committee of the House reported in favor of a grant of one thirty-sixth of "the lands of the United States" within the territory for the use of schools. On this report Congress proceeded to reserve section sixteen in every township surveyed for sale, as well as a township for a seminary of learning.[13] But when the enabling act for Orleans Territory was passed, no educational grants were provided.[14] The act contained certain provisions which must be incorporated in the State Constitution, among them the tax exemption of lands sold by the United States for five years. No consideration was offered for this concession. No school or college land grants were made. The five per cent. fund was granted, but as a free gift rather than as a "quid pro quo." In other words, the country beyond the Mississippi had never come under the provisions of the Ordinance of 1787, and so it was not necessary to secure the voluntary consent of the inhabitants of that region to the tax exemption measure.[15] Therefore, Congress im-

[13] P. L. I., 258. April 21, 1806. [14] Feb. 20, 1811.

[15] The "articles of compact" of the Ordinance of 1787 could only be altered by common consent of the Original States and the people of the states to which it applied.

posed the condition and did not need to offer the customary land grants. However, Louisiana secured some school lands and a township for a university, but no provision was made for the regions which were held under private claims. The school sections reserved in the public lands were turned over to the State in 1843, when the Legislature was empowered to sell them, with the consent of the inhabitants of the townships concerned.[16]

In the case of Missouri, the second State to be admitted west of the Mississippi, the enabling act was a combination of the two existing types.[17] Certain conditions contained in the Ordinance of 1787 were imposed, and then the land grants were offered on condition of the tax exemption. This was a perfect example of the "quid pro quo" idea. In the case of Missouri, Congress could have insisted upon the tax exemption just as it did in the case of Louisiana, and then it could have graciously offered the various land grants and the five per cent. fund. In any case, Missouri received one section for schools in every township of the State, and the form of the act was followed in the case of Arkansas, the next State beyond the Mississippi to be admitted.[18]

[16] The Mississippi enabling act of 1817 was modeled on the Orleans act.

[17] March 6, 1820.

[18] June 23, 1836. A study of the enabling acts of this period discloses the following variations in addition to those mentioned in the text. A comparison of the acts for Mississippi and for Alabama is of interest. The Ordinance of 1787 was never formally extended to the entire region covered by those states, although it was applied to the cessions of North and South Carolina and the

During the territorial period Congress provided in various ways for the protection and improvement of the school reserves, but the only act passed before 1820 was that providing for the appointment of a number of agents by the county courts

southern half of what later became the Georgia cessions. In the articles of agreement and cession between the United States and Georgia, of 1802, it was stipulated that the terms of the Ordinance of 1787 should be extended to the Georgia cession, except the prohibition of slavery. Yet when Mississippi was admitted it was considered necessary to secure an irrevocable ordinance on the part of the state to the effect that the people of the territory disclaim all right or title to the waste land within the territory, that no taxes shall be placed on lands sold by the United States for five years from the date of sale, that lands of non-resident citizens shall not be taxed higher than those of residents, that no taxes shall be imposed on lands the property of the United States, and that the Mississippi and other navigable streams shall be common highways free from all state taxes or tolls. These conditions were a combination of the articles of compact of the Ordinance of 1787 and the tax exemption bargain of the Ohio enabling act. But Mississippi was required to accept them without any choice in the matter and no compensation was offered, although a free gift of the five per cent. fund was made. In 1819, when the Alabama enabling act was passed, the school and college lands, the salt springs and the five per cent. fund, were offered to the convention "for their free acceptance or rejection" provided that the irrevocable ordinance similar to that prescribed for Mississippi be enacted. An inference from this act is that Alabama might have rejected the offer and then asserted her title to the lands within her limits. But if the convention had done so Congress certainly would not have admitted her into the Union, and the claims of a territory to the public lands within its limits would have been untenable. After 1820 the right of the Federal government to retain possession of the public lands within a sovereign state was frequently questioned, but no satisfactory constitutional objection could be raised. The question became such a troublesome one at times that many members of Congress believed it would be expedient to cede the public lands to the states in which they lay, but fortunately this opinion was never widely held.

Missouri, Illinois, Michigan, and Arkansas agreed, in their com-

in Mississippi for the purpose of leasing the school lands and for protecting them from waste.[19] But the vesting of the educational reserves in the State on its admission did not bring to an end the control of Congress over them. The State merely acted as a trustee and Congress retained the right to insist upon the proper execution of the trust, although the right was never used. The leasing of the school sections was not considered profitable by the States, and after 1820 first Ohio, and then the other States, in turn, were given the right to sell the lands and use the proceeds for the support of the schools.[20] The principle upon which Congress acted was that the States should not dispose of their school lands until they could be sold for a substantial price, and that in the meanwhile they should be leased under the direction of the State legislatures.

The most important development in the school grants after 1820 was the reservation of the thirty-sixth section in addition to the sixteenth in each

pacts, not to tax military bounty lands for three years after the date of the patent, so long as they were retained by the patentee of his heirs.

Although the credit system, which made the five year tax exemption desirable, was abandoned in 1820 it was not until 1836 that a public land state secured the right to tax public lands as soon as sold. The enabling acts of Michigan and Arkansas omitted the former restriction on the taxing power, except in the case of bounty lands. In 1847 the states admitted before 1820, regained the right, and Missouri finally secured the assent of Congress in 1852.

[19] Jan. 9, 1815, ch. 20.

[20] Ohio, 1826, Alabama, 1827, Indiana, 1828, etc.

township in Oregon Territory by the Act of August 14, 1848, and all States admitted since that time have enjoyed the increased grants.

The custom of granting lands to the States for the purpose of higher education originated not in the Ordinance of 1785 but in the land sales of 1787. The United States granted two townships in the Ohio Company's purchase for the use of universities, and offered similar donations to purchasers of equal amounts of land. John Cleve Symmes desired a township in his tract, but his purchase did not warrant such a donation; however, in 1792 Congress decided to make the desired grant for a university in his tract. The first university grant, therefore, was simply a feature of the private bargain between the old Congress and the representatives of the Ohio Company. The university grants formed no part of the bargain with Ohio in 1803, although the act provided for securing the township appropriated in 1792, but never located by Symmes. Congress considered the principle a good one and extended its operation south of Tennessee, when a township and certain lots were reserved there for Jefferson College, in 1803. The next year three townships were reserved in what became the States of Indiana, Illinois, and Michigan, and two years later the principle was further extended beyond the Mississippi and a township was reserved in the western district of the Territory of Orleans. In 1811 a second township was reserved in Orleans

and one in Louisiana Territory, but, as has been pointed out, the Orleans enabling act contained no educational grants.

A second township for a university in Mississippi Territory was reserved in 1815. Indiana was admitted in 1816, and two townships for a seminary were granted as a part of the tax exemption compact. But the next year Mississippi was admitted and no educational grants were made, although the tax exemption was insisted upon. The State did not lose the educational grants, however, for the school lands and two townships for a university had already been reserved. In 1818 Illinois received two townships for a seminary, and the three per cent. fund in that State was to be applied to the encouragement of learning, "of which one-sixth part shall be exclusively bestowed on a college or university." The Alabama act of the next year was modeled on the Illinois act, rather than on the enabling act of Mississippi, her sister State. The grant of two townships for a university was made one of the offers. Missouri also was offered two townships in 1820.

Aside from these uniform donations of two townships to a State, except in the case of Ohio, which received three, there were a few minor grants in favor of universities or seminaries, as they were at times called. Certain town and outlots near Natchez, Mississippi, were granted to Jefferson College in 1803. Tennessee was instructed to appropriate one hundred thousand

acres to each of two universities out of an indefinite amount of land granted by the government. The common at Vincennes was ordered to be divided and sold and the proceeds were to be used for draining a pond near by, the balance going to the Vincennes University.[21] But down to 1862 the grants of this kind were small and rare. In that year came the great grants for agricultural and mechanical colleges, which reached almost nine times the amount of land previously granted to universities.

In addition to these purely educational grants there were two which were more in the nature of aid to a deserving charity, although the charity had an educational aspect. These were the grants for the aid of asylums for the education and instruction of deaf and dumb persons. In 1819 a township of land was granted to the Connecticut Asylum. This was a distinct departure from all former grants, for it was for the benefit of a private institution in one of the old States. No one could question the merit of the institution which was benefited, but the grant was simply an act of grace on the part of Congress. With the passage of the measure Congressmen believed a new opening had been found for onslaughts on the public domain. The next year a bill was presented to the House in favor of the New York Asylum, and the opposition attacked it on grounds of expediency, as a violation of the compacts of cession, and as a vio-

[21] April 20, 1818, ch. 128.

lation of the Constitution, the latter of which could not be maintained.[22] The House rejected the bill by a large majority. In 1826, a grant similar to that to the Connecticut Asylum was made in the case of the Kentucky Asylum, and after that, although many other petitions were presented in favor of asylums in New York, New Jersey, Pennsylvania, Ohio, North Carolina, and Indiana, Congress refused to extend the grants. It realized that it had apparently established a bad precedent, and after it had balanced the grant for the Northeast with one for the Southwest it refused to appropriate more of the public domain in aid of private charitable or educational institutions in the old States.

Only a word need be said in reference to grants for religious purposes. In the Ohio Company and the Symmes' purchases one section in each township was reserved for religious purposes. Congress was only willing to carry out the letter of the law in these grants and refused to appropriate lieu lands in cases where section 29 was not available.[23] Applications for lands for the support of religion came up to Congress from Mississippi Territory in 1799 and from the Northwest in 1801, but Congress refused to incorporate the grants in the general system. In 1811 a special grant of this kind was sanctioned by Congress in the case of the Baptist Church at Salem, Mississippi, but President Monroe vetoed the bill because it comprised "a

[22] Annals, 1819-20, p. 882. [23] P. L. II., 253-4.

principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment." Monroe's action was endorsed by Congress, and no other appropriation of land for religious purposes was considered during the period under discussion.

In 1828 Ohio petitioned for permission to sell the lands reserved for religious purposes, and in 1833 this was granted.[24] The proceeds of the sales were to be invested and used for the support of religion, under the direction of the Legislature, within the townships in which the reserves were located.

The land grants for education in the period from 1785 to 1820 followed a well-defined system, as has been shown. The grants to the States were not entirely uniform in amount and the method of actually granting the land varied from time to time, but aside from the grants to the asylums for the deaf and dumb there was little deviation from the regular system. That this was the case is due to the fact that during this formative period the public land committees in Senate and House were led by level-headed men who refused to recommend favorably the petitions for lands submitted by institutions in the new States and the old. Congress could have made a grant of land to Stephens-

[24] P. L. V., 391. Feb. 20, 1833, ch. 42.

burg Academy in Virginia[25] just as lawfully as to the Connecticut Asylum for the Deaf and Dumb, but it was evident to those who knew most about the land question that if the system of grants for private institutions once became engrafted on the land system there would be a vicious circle of demands from institutions in every State in the Union. With unlimited control over the public lands, Congress could have become a munificent patron of learning—but there would have been a general scramble for its bounty. It was expediency, rather than any lack of power, which caused the denial of the many requests of the needy institutions.[26] Great credit must be accorded the men who defended the regular system of educational grants against the demands for special favors.

At the very end of the period now under discussion the whole question of national land grants for education was taken up in a new way. It was then that the idea of a general system of grants for education in all the States, old and new, was earnestly advocated. In 1819 the proposition called for a grant of one hundred thousand acres to each State for a university.[27] This resolution was unfavorably reported by a House committee on the ground of expediency—to invest these corporations with Western lands would impede settle-

25 P. L. II., 11.

26 For many of these petitions see State Papers, Public Lands.

27 Annals, 1818-19, 346.

ment and lower the value of the public land near the unoccupied tracts.[28] The committee preferred a money grant to one of land. From that time until the distribution bill of 1841 some sort of a proposal was before Congress for educational grants to all the States of land or of money from the land revenue. These measures were generally involved in the broader question of the distribution of the land or of the whole surplus revenue, so they must be considered in that connection and not in a study of this nature. It was not until 1862 that land grants for higher education in all the States were made.

A study of the development of land grants for education leads to the opinion that on the whole Congress acted wisely in the matter. The grants followed a fairly well-defined system. Every one of the public land States received school lands and lands for the aid of higher education, although the grants were not equal in amount. These appropriations were founded upon the grants of the Ordinance of 1785, they were revived as part of the bargain with Ohio, and they were continued because of their inherent worth and the equity of treating each of the new States alike. Frequently when members of Congress attempted to explain or defend the grants they fell into curious constitutional misinterpretations, but it took Congress a long while to realize that its power over the public lands was limited only by its good judgment. Its

[28] P. L. III., 410.

sound common sense was manifested in the rejection of the many attempts to change the regular system of grants into a hurried scramble between local institutions. No matter how deserving they might have been, Congress was wise in denying them special grants of land. It would have been more expedient, although less constitutional, to have given them aid in money.

With the vesting of the educational grants in the States, on their admission, the responsibility of Congress ceased, except in certain instances, when it later authorized the sale of school and seminary lands. If the school lands were carefully preserved and improved they should furnish a steadily increasing aid toward the support of the local schools. But this has not always been the case,[29] and the student of State and local history must determine why these liberal grants were not more generally effective.

[29] Professor Knight, who has given a careful account of the actual operation of the land grants in his "History and Management of Land Grants for Education in the Northwest Territory" summarizes the causes of the small amount of some of the state educational funds as follows: an undue haste in selling the lands; careless legislation and lack of restrictions on the Legislature; failure to guard and invest properly the moneys received from the land sales; the general indifference of the people to the whole subject; special legislation; the attempt to divert educational funds from their proper object, or so to dispose of the lands as to accomplish other State purposes to the injury of the cause of education. Pp. 162-166.

CHAPTER XII

SPECIAL GRANTS OF LAND, PUBLIC AND PRIVATE

Aside from the general systems for the disposal of the public domain, which included sales, bounties, grants for education and internal improvements, preëmptions and donations to settlers, there were a number of special acts which granted land to individuals, companies, or administrative bodies according to no definite policy save that of the good will of Congress. In theory it is surprising that any of these grants should have been made: in practice it is remarkable that each example was not multiplied tenfold. In making each grant Congress showed that it refused to be bound by any iron-clad system, and in turn it refused to consider the individual grants as precedents for future action. Grants were given and were again denied with no uniformity of treatment. In place of a system there was set up influence and expediency. It is no little tribute to the good sense of Congress as a whole that, although it was an easy matter to grant away a little land, so few of the demands for special favors were successfully presented. Because of the lack of definite plan in the making of the grants it will be best to take up each one in order rather than to attempt a general treatment.

Under the Old Congress three special grants were made, to the Canadian and Nova Scotian volunteers and refugees, to the Christian Indians in Ohio, and to Arnold Henry Dohrman.

Canadian Volunteers and Refugees

With the outbreak of the Revolution a few of the residents of Canada espoused the cause of the colonists to the southward. Some of these joined the expedition of Montgomery and Arnold against Quebec, and with the failure of that expedition were forced to withdraw with the American troops. Others retired voluntarily or were forced from their homes because of their sympathy with the Americans. Some of these refugees joined General Hazen's brigade of the Continental forces, others took no active part in the Revolution. When the treaty of peace was signed, although an effort was made to protect the Loyalists in the States, no provision was made for these refugees. At this juncture they turned to Congress for relief, and in 1783 the Congress of the Confederation promised that as soon as it could make grants of land it would reward them for "their virtuous sufferings in the cause of liberty." [1] In the meantime the men, women, and children were to receive rations, while New York was urged to receive the officers and men as citizens. Two years later a similar pledge was made to certain refugees from Nova Scotia,[2] and the first step toward its

[1] April 23, 1783. J. IV., 193. [2] April 13, 1785. J. IV., 498.

redemption was taken when, in the land ordinance of 1785, three townships adjacent to Lake Erie were reserved for these refugees.

But a reservation did not mean a passing of title, especially as the Indian claims to the region in question had not been extinguished. In 1784 New York very generously offered to provide land for the Canadians,[3] and grants of 500 or 1,000 acres on Lake Champlain were made in a number of instances. The United States transported them to their lands and furnished them with rations for fifteen months, and, in the case of the aged and infirm, for another year.[4] In 1787 one hundred and seventy rations per day were issued, and the next year forty-five for the aged.[5]

With the establishment of the new government and the settlement of Ohio came the demand for the fulfillment of the pledge of the old Congress. But the reserved tract could not be granted because of the Indian title, and the promises had been indefinite in amount. Petitions in 1793 and 1794 were favorably reported by House committees, but no legislation was passed until 1798.[6] And this act merely provided for the presentation of claims and the examination of them by the Secretary of War and the Secretary and Comptroller of the Treasury. The donation of land was not to be given for military service alone, but for "serv-

[3] N. Y. Act of May 11, 1784, 205 were entitled to land. P. L. I., 28.

[4] J. IV., 660.

[5] id. 878.

[6] April 7, 1798, ch. 26.

ices, sacrifices and sufferings, in consequence of their attachment to the cause of the United States." Two years were allowed for the presentation of the claims, and those not submitted would be barred.

On May 8, 1800, the officials reported that they had examined 73 claims, and recommended that 33,850 acres be granted to 49 individuals.[7] In these cases they had deducted any land received from New York, and 12 of the rejected claims were considered already compensated by that State. The donations suggested by them ranged from 2,000 to 100 acres.

Gallatin, chairman of the House committee, reported that, as the proposed grants were considerably less than had been expected, and as the claimants had waited almost twenty years for the promised compensation, it would be well to increase the grants. This was done by the Act of 1801, which named 49 grantees as the recipient of from 2,240 to 160 acres.[8] The reserve was to be set apart on the southern boundary of the military tract. So at last the ancient promise was to be fulfilled.

In 1803 an attempt was made to include the refugees from West Florida in the provisions of the grant, but without effect.[9] In that year Samuel Rogers, whose claim had been postponed for lack of evidence, was granted 2,240 acres. It now

[7] P. L. I., 106-7.

[8] Feb. 18, 1801, ch. 5. 43,040 acres in all.

[9] Annals, 1802-3, 592.

became evident that a number of deserving claimants had failed to present their evidence within the two years provided by the Act of 1798. To afford justice to them the act was revived for two years, in 1804, and another two-year period was granted in 1810.[10]

Under these acts 12,720 acres were granted to 17 people in 1812.[11] Four years later the unappropriated lands were restored to the public domain and attached to the Chillicothe land office.[12] The sufferings of the Canadian refugees had been in part recompensed by 58,000 acres, granted twenty-five or thirty years after their original service or sacrifice. Once again the terms of the acts were extended, and in 1834 the heirs of Lieutenant-Colonel Richard Livingston received six hundred and forty acres.[13]

Christian Indians in Ohio

The second special grant of the Old Congress was, however, the first to be carried out.[14] It was made in favor of the Christian Indians in Ohio who had been under the instruction of the Moravian missionaries since the establishment of their settlements on the Muskingum in 1772. When Congress was petitioned to make a grant in their favor they were the objects of general pity, for in 1782, during the fierce border warfare, a number

[10] March 16, 1804, ch. 23. Feb. 24, 1810, ch. 12.
[11] April 23, 1812, ch. 63.
[12] April 29, 1816, ch. 153.
[13] June 27, 1834.
[14] King, Ohio, 119-160.

of these harmless Christian Indians had been brutally massacred by some frontier levies, and the settlements broken up. With the approaching sale of Western lands it was necessary that the improvements at the three villages be secured in some way, and as a partial compensation for the wrongs inflicted by the American forces it was provided in the Ordinance of 1785 that the land about the villages should be reserved for the sole use of the Christian Indians. This indefinite reservation of 1785 was made more definite in 1787, when the Ohio Company's purchase was under consideration. At that time 10,000 acres adjoining the three towns of Gnadenhutten, Schoenbrun, and Salem were to be reserved.[15] The next year it was agreed to estimate each of the townsites at $666\frac{2}{3}$ acres and the adjacent reserves at $3{,}333\frac{1}{3}$ acres, in this way making each tract equal 4,000 acres.[16] The surveys were to have been made under this resolution, but another act in 1796 was necessary. The patent for the land was granted on February 24, 1798.[17]

All went well with the Moravian settlements for a few years. The three reservations fell within the military district, and after 1800 this region was rapidly peopled. The contact with the white settlers had a deplorable effect upon the Indians, until finally the missionaries felt that it was necessary to remove their wards from temptation. By 1823 about 150 of the Indians had removed to

[15] J. IV., app. 18. [16] J. IV., 862.
[17] P. L. III., 531.

Fairfield, Canada, and only 20 or so remained in Ohio.[18] At that time the Moravians petitioned to be relieved of their trust by a retrocession of the reserves to the United States. An act of that year[19] authorized the President to undertake measures for purchasing the rights of the Indians, and under it Governor Lewis Cass, of Michigan Territory, was appointed to negotiate. He entered into an agreement with the agent of the Moravians and with the descendants and representatives of the Christian Indians which was ratified by Congress in 1824.[20] This provided that the 12,000 acres be retroceded to the United States, with the exception of the church lots, graveyards, and parsonages. In consideration of the expenses incurred by the society it was agreed to pay it $6,654.25 out of the proceeds of the first land sales. Preëmption was granted the lessees of land, and provision was made for purchasing certain improvements made under lease. As for the Indians, they were to receive an annuity of $400 as soon as the land sales amounted to enough to produce that sum at six per cent. This annuity was to be paid as long as the Indians remained in Canada; should they desire to remove to the United States, a reservation of 24,000 acres would be set apart for them, and with the removal to the reservation the annuity would cease.

Under the Act of 1824 the tracts were surveyed

[18] P. L. III., 615.

[19] March 3, 1823.

[20] P. L. III., 714-6. May 26, 1824, ch. 174.

and valued. One thirty-sixth part of each tract was set apart for schools. The remaining land, after the preëmptions had been claimed, was placed on sale at auction at New Philadelphia and the residue attached to the Zanesville land office.

The Dohrman Grant

The last special grant under the old Congress contained several interesting features. Of all the debts incurred during the Revolutionary struggle this was the only one to be directly paid in land, and it is indeed remarkable that, at a time when the government was practically penniless, yet in possession of a vast amount of fertile land, more of the outstanding obligations were not met in this way.

Arnold Henry Dohrman had been agent of the United States at Lisbon during the Revolution, and during his service there he had advanced money liberally for the relief of American seamen and prisoners in that port.[21] At the close of the war he memorialized Congress for a reimbursement of these expenditures, and in 1787 it was resolved to make a payment of $5,806 72/90 for specific disbursements.[22] But in addition he claimed $20,277 40/90, the vouchers for which were too general to be admitted, although the fact was not disputed. In consideration of his "faithful and generous services" it was agreed to pay him $1,600 per annum from the commencement of his public

[21] See Annals, 1816-7, pp. 1227-42. [22] Oct. 1, 1787. J. IV., 783.

expenditures to the date of the resolution, and in addition to grant him one township of land in the "three last ranges surveyed," subject to the usual reservations. Deducting the five reserved sections, the township would net 19,840 acres, which at the existing price of $1.00 an acre would almost meet the principal of the debt due him. But, as a matter of fact, it was not possible at that time to sell the township for anything like $20,000 in specie.

Dohrman sent an agent to select a township for him, and acting on his advice he applied for the thirteenth township in the seventh range. A patent for this issued in 1801. The whole question of the services of Dohrman and his remuneration came up in 1816, when his widow petitioned Congress for aid. She showed that her husband had been very unfortunate in the choice of his grant. As one person described it: "The whole of the township is hilly, broken with gullies, remote from settlement or improvement, and would not now command $10,000 at a public sale." [23] Dohrman died in 1813, leaving a widow and eleven minor children. Congress listened to the widow's appeal and granted her a pension of $300.00 per annum, and $100 for each child until it reached 21 years.[24]

Aside from the fact that the Dohrman grant was a payment in land of an existing obligation,

[23] Annals, 1816-7, 1240.

[24] Twenty years later the heirs petitioned for a grant of the four reserved sections in the township, on the ground that their father did not understand that any such reserves were to be held there. Congress waived its right in 1833.

it is of interest to note that Congress believed a land payment could be made while a money payment would be improper. This belief has always persisted in Congress, and the Dohrman grant was its first expression. It is a constant source of wonder that more grants of this nature were not made, when land was plentiful and demands were urgent.

Special Grants, 1789-1820

The first special grant under the new Congress was made in 1795 in favor of the French settlers at Gallipolis, a discussion of which may be found in chapter three. This was followed in the next year by a grant of preëmption to Ebenezer Zane, builder of "Zane's trace" from Wheeling to Limestone. Some of the early endeavors to secure lands on special terms have been considered. At this time Congress insisted upon maintaining the general system. The next special grant, therefore, was of an exceptional nature.

Isaac Zane had been captured by the Wyandot Indians when a boy of nine years; he had grown up with them and had married an Indian woman.[25] His Indian friends had given him a tract four miles square at the Big Bottom, on Mad River, in Ohio, and it was not thought that his lands would fall on the American side of the Greeneville treaty line, as had turned out to be the case. In 1799 some of the chiefs told Governor St. Clair that they desired the tract might be set apart for Zane. In view of

[25] P. L. I., 93, 121.

these facts Congress granted him three sections of land in fee-simple which he might locate on any of the public lands in the Northwest, but two of the sections were to be held in trust for his children.[26] This grant was based largely upon the services rendered by Zane to American prisoners and in furnishing information of the movements of the Indians.

At the same time a very similar case was under consideration, although it was not determined until 1807. This was the request of George Ash that he be allowed to accept a grant from the Indians of land still remaining within their boundaries. He, too, had been captured by the Indians and had remained with them until 1795. In this time he had won their good will, and certain chiefs of the Delaware and Shawnee tribes were willing to grant him a tract of land on the Ohio opposite the mouth of the Kentucky River.[27] In 1802 a committee of the House reported in favor of allowing him to accept a mile square from the Indians, although the general principle of grants from the Indians to individuals was not approved. No action was taken on this report, whereupon Ash proceeded to settle on the land and continued to request a confirmation of the grant. In 1806 his memorial was rejected, but in 1807 it was decided to grant him a preëmption to 640 acres, including his improvements. This was the last Indian grant to receive any favorable treatment from Congress. It was a

[26] April 3, 1802. P. L. I., 256. [27] P. L. I., 122, 257, 584.

well-established principle that all grants or purchases of land from the Indians must be executed under the authority of the United States. When George Rogers Clark, in 1805, asked for the confirmation of a grant of two and a half leagues from the Piankishaw Indians in 1779 his petition was denied.[28]

Before the Ash preëmption was finally allowed, Congress had for the first time favorably recognized a special industry. This was the Act of 1802 for the encouragement of the culture of the vine to the extent of allowing four sections of land to be purchased on eleven and a half years' credit, without interest. These terms, allowed John James Dufour and his associates, were so much more favorable than the ones on which the other public lands were sold that other applications were soon presented. Some of these have a special interest, notably the request for townships on special terms where the New England system of "township-planting" might be carried out. In 1804 and 1805 applications of this sort were presented by citizens of Vermont, but no action was taken.[29] The next year Francis Menissier, who had been experimenting with grape growing near Cincinnati for six years past, requested a section of land on an extended credit. In reporting his petition unfavorably the House committee took the stand that a grant of this kind would in reality be a bounty, and that the fact that land instead of

[28] P. L. I., 247. [29] Annals, 1803-4, 1053, id. 1804-5, 700, 872.

money was desired did not alter the case, "if we would not give the former, we ought to withhold the latter."[30] If this view of the case had prevailed in 1802 the grant to Dufour would never have been made.

The whole question of making special terms was fought out at the same session when the Senate passed a bill allowing a twelve year credit for a township of land to the Harmony Society of Pennsylvania.[31] This society proposed to settle about 3000 Wurtemburg Lutherans, fleeing from oppression, in Indiana Territory where they would cultivate the vine. In the House the grant was questioned and a warm debate ensued. In its favor the following arguments were urged: the settlement would be for the good of the community; a precedent had been established in the Dufour grant; it was better to give land away than to allow it to remain idle; the colony would increase the value of the surrounding lands; the land was not worth the asked price anyhow; no township had yet been sold for $46,000; and finally it would be a humane act. In reply it was urged: why oblige foreigners instead of our own countrymen? Why deviate from the established system of selling lands? All Europe is full of oppressed people, will not this be a bad precedent? It will be bad to have a large body of foreigners compactly settled; why not allow our soldiers of the Revolution to buy lands on these terms, which amount to only .97 an acre? Finally,

[30] P. L. I., 256-7. [31] Annals, 1805-6, 463-6.

it is not for the common benefit, and it violates, therefore, the compact with Virginia.

Various amendments to the measure were made but the bill was finally defeated by the casting vote of the Speaker. The discussion is worthy of note because it contained most of the arguments used for or against these grants. The defeat of the measure served as a precedent for the next eleven years. At the next session the request of inhabitants of Ovid, New York, for a township on special terms was denied,[32] and in 1810 a similar request by the Society of La Trappe, in Illinois, failed.[33]

In the meanwhile Dufour and his associates had located 2500 acres in the Cincinnati district and proceeded to raise grapes and make wine with varying success.[34] The payment of $5000 without interst was not due until January 1st, 1814, but in 1806 Dufour realized the hopelessness of making a payment at that time and petitioned for an extension of the credit. Congress saw no reason for acting so prematurely, but in 1813 the associates stated that unless their credit was extended they would have to forfeit the land. This petition was favorably considered at a time when relief acts were in order so an additional credit of five years was allowed, until January 1st, 1819. By that time it was hoped the vines would be productive and the wine industry well established.

[32] Dec. 1806. P. L. I., 288. [33] Annals, 1809-10, 612.
[34] P. L. II., 744.

In order to follow out the history of the first vine-growers' grant and the contemporary petitions that failed, the order of events has been broken. Between 1802 and 1815 only four special grants were made and in each case they were but developments of existing laws. This statement alone would show how carefully the public lands were managed during the period. One of these acts, the preëmption to George Ash, granted in 1807, has already been discussed. Another, the grant of 11,520 acres to General Lafayette in 1803 might be considered a Revolutionary bounty, were it not for the size of the grant. Under the bounty resolutions a Major-General was entitled to 1100 acres, but as Lafayette had never been attached to any particular "Line" he had failed to receive any land. When it was proposed to remedy this omission it was suggested that he be considered as on the Virginia Line, as he had served most in that state, and as Virginia had allowed her Major-Generals 15,000 acres it would be proper for Congress to now do the same. Such a bill passed the House, but the Senate reduced the grant to 11,520 acres, over 10,000 acres more than any other Major-General had received from Congress. It is on this account that the grant must be considered a special one, based on the exceptional services of General Lafayette, rather than a military bounty.[35] Under the act the lands were to be located northwest of the Ohio, but later legislation permitted their loca-

[35] Annals, 1802-3, 569, 582-4. March 3, 1803, ch. 30.

tion west of the Mississippi, where some of the lands were located on older grants, necessitating their removal, under an Act of 1845. At the time of his visit to the United States in 1824 a further grant of $200,000 and a township of land was made in consideration of his "services and sacrifices" during the Revolution.[36]

Another special grant, easily understood, was that in favor of the members of the Lewis and Clarke exploring expedition to the Pacific northwest in 1803-6. This act of March 3rd, 1807, granted 1600 acres to Meriwether Lewis and William Clarke respectively, and 320 acres to each of their thirty-one men. In addition they received double pay during their service. It is of interest to note that this was the only exploring expedition to be rewarded in terms of land.

The last grant in this sub-period was made in 1811 to John Eugene Leitensdorfer.[37] For his services as Inspector-General and Chief Engineer in the war with Tripoli 320 acres were granted. This was the only land grant made for services in this war until the general bounty act of 1855.

At this session of Congress President Monroe sent down a very important veto message dealing with a special grant.[38] It seemed that the Baptist Society at Salem, Mississippi, had built their meeting-house on government land because of its convenient location. The only way they could secure

[36] Dec. 28, 1824.

[37] Feb. 13, 1811, ch. 12.

[38] Misc. II., 11, 154.

the land was at open sale, when the minimum tract —at that time three hundred and twenty acres— would have to be purchased, and it was possible that the society might be out-bid by others. It seems as if these difficulties could have been provided for, especially as they were understood at the time the church was built, but the simplest solution was to ask Congress for a donation.[39] Jeremiah Morrow, the zealous guardian of the public lands, objected to a grant of land but favored the reservation from sale of five acres for the use of the society. Such a provision was incorporated in a relief bill covering several claims which passed both Houses, but President Monroe vetoed it on March 2, 1811, on the ground that it "comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment.[40] The bill could not be passed over his veto, so the church clause was stricken out. The importance of this veto can hardly be over-estimated. If the bill had become a precedent it would have resulted in constant applications for public lands for the use of churches, mission houses, and other religious purposes, and if the Baptists in Mississippi had secured their grant it would have been difficult to deny an equal privilege to the representatives of other churches throughout the West.

[39] P. L. I., 104. [40] Annals, 1810-11, 366.

EARTHQUAKE SUFFERERS AT NEW MADRID, MO.

Of all the special grants made by a generous Congress one of the most unique was undoubtedly that which allowed persons whose lands had been damaged by the great earthquakes in Missouri of 1811 and 1812 to exchange their holdings for others in the public domain. And the operation of this act shows plainly how the generosity was abused until it became a crying scandal.

The earthquakes had caused considerable damage in southern Missouri, and the villages of New Madrid and Little Prairie had been seriously injured. In some places the land surface had been altered, great fissures were reported, and lakes had appeared, but on the whole the actual damage to the soil then under cultivation was very slight.[41] It was easy, however, to magnify the size of the "chasms" and to urge Congress to come to the relief of the unfortunate settlers. While the bill was under consideration in the House an endeavor was made to kill it with ridicule by moving an amendment to the effect that land should be granted to persons who had sustained damage through the great wind storm in Washington in August, 1814, but in spite of argument and sarcasm the measure passed.[42] This Act of 1815 was an excellent example of a carelessly drawn statute,

[41] For the exaggerated contempory accounts, see a compilation by G. C. Broadhead, "The American Geologist" v. 30:76-87. For the conditions in 1846 see Sir Charles Lyell, "Second Visit to the United States," II., 172-182. [42] Annals, 1814-5, 1073.

and it is difficult to understand how it ever passed without comment.[43] It provided that residents in New Madrid County, Missouri, whose lands had been "materially injured by earthquakes," might locate the like quantity on any of the public lands in the territory "the sale of which is authorized by law."

And in this proviso dwelt the "joker": "Provided, that no person shall be permitted to locate a greater quantity of land under this act than the quantity confirmed to him, (as a foreign grant) except the owners of lots of ground or tracts of land of less quantity than one hundred and sixty acres, who are hereby authorized to locate and obtain any quantity of land not exceeding one hundred and sixty acres, nor shall any person be entitled to locate more than six hundred and forty acres, nor shall any such location include any lead mine or salt spring." When a new location was made the damaged land vested in the United States. The Recorder of Land Titles for Missouri was to pass upon the claims and issue certificates; these certificates entitled the holder to a survey of his location and eventually to a patent if they were filed with the Recorder within twelve months.

Under this act, therefore, it would be possible for an earthquake sufferer to exchange a town lot of one or two acres for one hundred and sixty acres, while if he held over six hundred and forty acres it would be unwise to change, unless he could turn in

[43] Feb. 17, 1815, ch. 45.

waste land and locate excellent lieu land. The provision regarding surveys also created the impression that the claims could be located on any public land even before it was surveyed although the sale of such land was not authorized. This belief was strengthened because for claims between one hundred and sixty and six hundred and forty acres only the exact amount of the damaged land could be relocated, but the land system did not admit of sales of less than one hundred and sixty acres. Would a person entitled to two hundred acres receive one hundred and sixty acres or three hundred and twenty acres—for no intermediate divisions were recognized, save in the case of fractional sections? Finally, were the relocations designed only for the original sufferers or could persons holding under them claim certificates?

With such questions of interpretation raised it was then a question of administration. The Recorder at St. Louis took the most favorable view possible. Some five hundred and sixteen certificates were issued and three hundred and eighty-two were eventually allowed. Of these one hundred and forty-nine called for more land than was relinquished, and in almost every one of these cases a lot of a few acres was exchanged for a full one hundred and sixty acre tract.[44] In one hundred and forty-two cases it is said, relinquishment was not valid, and persons owning no land received certi-

[44] P. L. IV., 39-47. One person ceded four small lots and secured four 160 acre tracts.

ficates.[45] And in most cases the holders of certificates proceeded to locate them on unsurveyed land. When the regular surveys were made it was found that the locations did not meet the new lines, so that numerous fractional sections were created. In 1820 William Wirt, the Attorney-General, gave an opinion to the effect that the locations on unsurveyed lands were void and that patents should not issue.[46] These "floating claims" had been causing considerable trouble, for they were being located on land claimed by preëmption and on land held under unconfirmed private claims.[47] Congress was unwilling to nullify the existing locations, so in 1822 they were ratified, although future New Madrid locations were to conform to the sectional lines. Moreover the warrants were to be located within a year after that date.[48]

The next year Mr. Sloo, the special examiner of the land offices, reported that a tribunal should be established for the immediate and final adjustment of these claims. "I will venture to say that the New Madrid law, as it is termed, has given rise to more fraud and more downright villainy than any law ever passed by the Congress of the United States. . . . In many instances, I am informed, fraudulent relinquishments have been made, and certificate obtained, by persons who had not the shadow of a claim to the land surrendered and the

[45] Only 20 were located by original claimants. One person held 33 certificates. Carr, Missouri, 111.

[46] P. L. III., 494-6.

[47] Annals, 1816-7, 771.

[48] April 26, 1822, ch. 40.

tract thus surrendered has sometimes been covered by another Madrid certificate, while the real owner continued in quiet possession of his property, without the least idea of relinquishing it. . . . And to close the scene, a great many of the persons who really did relinquish have claimed and intend to claim the right of preëmption on the tracts relinquished."[49]

Six acts were necessary to carry out the benevolence of Congress toward the earthquake sufferers. The last one, in 1866, ratified locations made after the final date set by the acts of 1822 and 1831. It goes without saying that the original act was unwise in principle, and carelessly drawn. The frauds arising during its operation should have given further proof of the unwisdom of granting land as a benevolence or a bounty.

THE SOCIETY FOR THE CULTIVATION OF THE VINE AND OLIVE

The last special grant made before 1820 originated in a most romantic manner, and ended in a succession of misfortunes. It was designed to aid a considerable number of Napoleonic refugees, who had fled to America after the "hundred days," by establishing them as cultivators of the vine and olive on the Tombigbee River, in Alabama. It is doubtful if a grant of this nature could have been obtained were it not for the pity excited by these

[49] P. L. IV., 47.

distinguished fugitives.[50] A Marshal of France, four Generals and nine Colonels were among the first shareholders in this association. But in 1815 the application of the New England Emigration Association[51] to purchase twenty-five townships on twelve years' credit, and to settle 2000 persons on the land in that period, was denied, and the next year, when the Kentucky Abolition Association prayed for donations of land for emancipated negroes it was told that "we do not give lands to whites, why to negroes?"[52] Again, after 1817 Congress denied the request for special terms presented by certain Swiss and Irish emigrants, and by the "Coffee Land Association." These facts are noted for the purpose of showing how unusual was the grant for the French refugees and how inconsistent.

In the latter part of 1816 and throughout the next year the refugees were arriving at our ports, first in importance being Joseph Bonaparte, late King of Spain. Toward the end of 1816 it was proposed to form an association for placing some of these exiles upon the land as cultivators of the vine and olive. A suitable tract was decided upon in the recent Creek Cession in Alabama, and favorable terms were asked from Congress. The grant was obtained after some discussion.

The act of March 3, 1817, was another ex-

[50] Reeves, The Napoleonic Exiles in America. J. H. U. Studies, XXIII., numbers 9-10.

[51] P. L. II., 898.

[52] Annals, 1815-6, 691.

ample of a badly framed statute. It provided for the sale of four townships in Alabama to the agents of the French emigrants at $2.00 per acre, payable in fourteen years. There must be at least one emigrant of full age for each half section in the grant, and no patent would issue until the whole tract was finally paid for, nor would more than 640 acres be granted to any one person. Some of the associates protested against the clause withholding the patent until all the land was paid for, preferring individual patents, but the provision was inserted in order to encourage the general development and to prevent the relinquishment of any poor land.[53]

It was not until November, 1817, that a list of emigrants was presented to the Secretary of the Treasury, and as 350 names were enrolled he gave instructions that the surveys be made.[54] In December about 150 emigrants sailed from Philadelphia and a larger number followed in April. Their first townsite, Demopolis, was later found to be on the public lands so it became necessary to lay out the new town of Aigleville. This was but the first of many misfortunes. The conditions of life on the frontier were hard and few were trained to manual labor.[55] At first there were no vines, and after some were procured from France they were not entirely successful. The frosts killed the olive trees to the roots. Most of the shareholders re-

[53] P. L. III., 435.

[54] P. L. III., 387.

[55] They paid $4 to $5 a bushel for corn. A cow and calf cost $40 to $50. P. L. V., 14.

fused to adventure into the wilderness, and many of the actual settlers were forced to sell their lands to a few who had capital, while squatters trespassed on the vacant acres. The settlement was hardly founded before it was forced to call upon Congress for relief.

The actual contract for the sale of the land was not signed until January 8, 1819. It was signed on the part of three hundred and forty-seven shareholders, each entitled to from forty to four hundred and eighty acres, with a proportion of the town and out lots, the amount depending upon the capital invested.[56] The terms of the contract called for the payment of $184,320 on or before January 8, 1833. This was a rather heavy payment to expect from a body of refugees engaged in introducing new cultures in a wilderness. The contract further called for a settlement on each of the allotted tracts within three years, and for the cultivation of ten acres in each one hundred and sixty in the aggregate within fourteen years. As to the vine, there must be one acre in each one hundred and sixty, taken aggregately, under cultivation within seven years, and within the same time there must be at least five hundred olive trees planted within the whole tract, unless it was shown that the olive tree could not be grown there.

It goes without saying that such a contract could not be carried out under the circumstances, and

[56] P. L. V., 23. No school sections were reserved. The land act of 1820 rendered these terms most unfavorable.

yet, should one shareholder fail to comply with the conditions it would jeopardize the interests of all the others.

Within a year after the contract was signed some of the settlers prayed that the terms might be altered so that individuals complying with the conditions might obtain titles, but Secretary Crawford was opposed.[57] He was willing to waive the condition of a settlement on each allotment and thought that if the whole number of settlements equaled the number of half sections it would suffice, but an act of Congress was necessary to change the contract.

In 1822, it was shown that eighty-one settlers had under direct cultivation or on lease 2600 acres, but that it would be impossible to ever carry out the terms of the original act and contract.[58] Congress, therefore, permitted those settlers who had individually complied with the contract and had paid their share of the purchase money, to secure patents for their holdings.[59]

This act afforded some relief, but it did not go far enough. It applied to the original grantees or their heirs or devisees, but did not include their assigns. Under the act an agent of the Treasury Department was sent in 1826 to report on the actual situation on the Tombigbee. His report shows how miserably the settlement had failed.[60] Of the three hundred and forty-seven shareholders

[57] P. L. III., 435.
[58] P. L. III., 536.
[59] April 26, 1822, ch. 33.
[60] P. L. V., 14-28.

only seventeen had complied with the terms of the contract and in one hundred and eight cases no performance at all had taken place. Forty-four other tracts had been settled by the grantees or their agents but some of these had since been sold and in others the conditions as to the vines were not carried out. In one hundred and thirty-three cases the tracts had been sold before any settlement was attempted and eighteen other tracts were sold after settlement. And the story was the same in the reserved and forfeited lots which had been divided among new shareholders: in only two cases was there complete performance, in forty-four none was attempted, thirteen had been sold and in the remaining seven the terms were not complied with. In the entire tract he found 7414 acres under cultivation, but the most extensive and profitable farms were occupied by Americans. Only two hundred and seventy acres had been planted in vines, and only one-tenth of these in vineyards, the rest being cultivated along with the cotton. Some three hundred olive trees had been set out but they could not stand the frost.

This report led to the Act of 1831 which virtually gave a preëmption right, at one dollar and a quarter an acre, to those who had complied with the conditions and to those who, failing to comply with them were in cultivation of the land at that time.[61] The payments were to be made before March 3rd, 1833. Further relief was granted two

[61] Feb. 19, 1831, ch. 30.

years later[62] when cultivation before October 31, 1832, under a grant or purchase, would entitle one to a preëmption, while other actual settlers at that date, who up to this time had been trespassers, might now preëmpt their holdings. The time of payment was further extended to May 15, 1834. Further legislation was necessary to quiet the titles to four sections reserved for small allotments, while any unclaimed land therein was to revert to the Demopolis Female Academy.[63]

In this way another attempt to relieve distress worked out in a very different manner from the one intended. The whole vine and olive scheme was romantic and impractical and the leaders were more in their element in their wild schemes against Mexico than in the strenuous cultivation of waste lands. Yet even if the refugees had sought to develop their grant the terms of the contract made success impossible. So, eventually, a few French exiles gained title to a little land in Alabama while the more resourceful Americans secured the most and the best of the acres. The operation of this measure should have warned Congress against giving aid to refugees in terms of an extended credit.

While the vine and olive grant was in operation Congress refused several other petitions for land on special terms. In 1818 the request of Edmund Dana was denied.[64] He represented several hundred purchasers who desired 207,500 acres of land,

[62] Feb. 19, 1833, ch. 30. [63] March 2, 1837, ch. 25.
[64] P. L. III., 301.

the first payment to be due on February 1, 1819, and 95,300 acres, with a first payment on December 1, 1820. This was a very small concession, compared with the extended credit allowed the French refugees, but Congress saw no reason to alter the general system, and feared to establish a precedent. At the same time a body of Swiss emigrants sought twelve townships on terms similar to those granted only the year before to the French.[65] They were told that they could scarcely expect peculiar favors and indulgences, and as the request of several hundred citizens had been denied surely no concession could be made to them. A few weeks later an application for one township in Indiana for the use of fifty Swiss emigrants, on ten years credit, was denied.[66] It was at this session that several of the Irish societies sought land on twelve years' credit for the use of their emigrants.[67] The question was warmly discussed in the House and an adverse report agreed to by a vote of 83-71.[68] This debate showed that the concession made to the French refugees was not to be taken as a precedent. A further attempt to secure extended credit in favor of Swiss emigrants was made in 1820, and the House Committee on the Public Lands reported that if any relaxation should be made it should be in favor of American citizens.[69] At that session the cash system at $1.25 an acre

[65] P. L. III., 303.
[66] P. L. III., 382.
[67] Missc. II., 489.
[68] Annals, 1817-8, p. 1053.
[69] P. L. III., 427.

was introduced which served to quiet requests for extended credit, while the terms were so reasonable that Congress did not hesitate to insist upon the maintenance of the general system.

If conclusions can be drawn from these erratic grants of Congress they would doubtless be, first, that in almost every case the special grant was made without good reason and was void of all consistency, and secondly, that Congress denied far more applications than it granted and therefore preserved the public domain from direct private exploitation or misguided benevolence.

SPECIAL GRANTS FOR PUBLIC PURPOSES

From time to time Congress made grants of land, or of moneys received from land, for public purposes in the western States. These grants were quite as inconsistent as the private ones, although rarely was an application for land denied if the use was a good one. As the subject is of little importance a mere summary of the legislation will give some idea of this form of disposition.

The first of these acts date from 1806. In that year the proceeds of land sales in the new Detroit town site were to be applied to the building of a court-house and a jail there. This assistance seemed reasonable as the city had been burned down in 1805. At that session, also, some land along the Mississippi was granted to Natchez as a common, and two years later an additional gift of two town lots was made. In 1807, and again in 1811, the

claim of New Orleans to a common was confirmed, and in 1812 she was given the site of a pumping station.

When Indiana Territory asked for a donation of four quarter sections for the site of a capital Congress took the position that such a grant would be a violation of the Virginia deed of cession, for it would benefit a particular territory and not the Union as a whole, so instead it allowed only a preëmption.[70] The same act authorized a committee to purchase 640 acres as a townsite for Giles County, Tennessee. Indiana, however, did not have to buy the site of her capital. It was granted to her as one of the articles of compact in her enabling act of 1816, and in this way any objection based on the Virginia cession was quieted. Ohio and Louisiana had obtained no such grant in their enabling acts. However in that year Ohio was permitted to sell 640 acres of the Scioto Salt Spring reserve and use the proceeds for a court house at Jackson County. Two years later New Orleans received the site of Fort Charles as a public square.

In the case of Alabama, first one section was reserved for a seat of government, in 1818, and this was increased to 1620 acres in the enabling act of the next year. But this was a direct grant, it was not made one of the articles of compact. At the same session Mississippi received two sections for a capital—no grant having been made in her enabling act of 1817. A few days later Illinois re-

[70] P. L. II., 252. Feb. 25, 1811.

ceived four sections for the same purpose. These grants of 1819 were in contradiction to the theory which prevailed in 1811.

When the claims at Vincennes were finally settled some unclaimed lots remained. These were, in 1818, to be sold and the proceeds devoted to public purposes. The common also might be sold and the proceeds devoted to draining a pond near the town, with the remainder to the University of Vincennes. In 1820, Ohio was allowed the pre-emption of a quarter section near the center of each of twelve counties for seats of justice. This was occasioned by the recent Indian cession.

These grants before 1820 are fairly typical of the later developments. Lands were frequently granted to towns for parks, streets, commons and such uses. Some of these requests were denied outright and in other cases one House or the other would fail to act. In 1824 a general act gave the right of pre-emption to one quarter section to all counties and parishes in the public land states for the location of county seats.[71] Such an act saved considerable special legislation. A later development was the grant of land for the erection of courthouses and jails, while Arkansas received ten sections for the building of a capitol. Another development of the Thirties was the appropriation of funds derived from sales of townsites to the erection of public buildings and construction of wharfs. That it was possible to overdo these applications was evident

[71] May 26, 1824.

when in 1831 the Legislative Council of the Territory of Michigan prayed for four townships of land (92,160 acres) to promote the cultivation of the mulberry tree and the production of silk.[72] Congress was reminded of its encouragement of special industries in Indiana and Alabama but precedents were really considered unnecessary for such a grant. "Like donations for like purposes to the different new communities would more closely connect their interests with the interests of the Atlantic States, and bind, as with *silken cords,* the extremities of the Union to the main body." It is a pity the Michigan sericulturists could not have demonstrated their claims before the Civil War broke out.

[72] P. L. VI., 268-9.

CHAPTER XIII

THE SATISFACTION OF THE CONDITIONS OF THE DEEDS OF CESSION, 1784-1802

The title of the United States to the public domain east of the Mississippi was based on the cessions of seven of the thirteen original states. But of those seven cessions four contained conditions which proved far more exacting than either of the parties had at the time imagined. To the credit of the central government it should be added that in every case Congress tried to live up not only to the letter but to the spirit of the conditions as it understood them. And over one hundred years elapsed before the last Congressional legislation, arising from the deeds of cession, was enacted.

THE CONNECTICUT RESERVE

A question which was easily settled, but which might have caused considerable trouble, was that arising out of the Connecticut cession. Connecticut maintained that her charter claims extended to the Mississippi.[1] Before the Revolution she had been engaged in a struggle with Pennsylvania over the Wyoming country and her contentions had been favorably considered by certain of the crown

[1] Charter of April 23, 1662.

officers in England.[2] In 1780, after the New York cession and the recommendation of Congress that all the States cede their claims to western lands, Connecticut offered to cede her lands but would retain the jurisdiction. This offer was refused by Congress. Two years later Connecticut and Pennsylvania took their boundary dispute before a Federal Court, organized under the terms of the Articles of Confederation, and there, in a decision which gave no reasons, the claim of Connecticut was over-ruled and Pennsylvania secured undisputed possession of the land within her chartered limits. In 1782 the New York cession was accepted and in 1784 the cession of Virginia was completed. Both these cessions covered the land claimed by Massachusetts and Connecticut. The latter state was not satisfied with the decision of the Federal Court. Even if the right of Pennsylvania to the land within her charter bounds were conceded, this, in itself, was no reason why Connecticut should not still own the land further west. So Connecticut asserted her claim to the land between the forty-first and forty-second parallels to the west of Pennsylvania. Naturally she desired to have her earlier pretensions vindicated, but it must also be remembered that of all the states claiming western lands Connecticut was the only one which did not have waste lands within her undisputed limits.

In 1786 Connecticut again offered to cede her western lands, reserving for herself a strip between

[2] Hinsdale (1899), 114.

the forty-first parallel and Lake Erie extending for one hundred and twenty miles from the Pennsylvania boundary. On May 4, Congress took up the proposal[3] and William Samuel Johnson explained the Connecticut claim while William Grayson opposed it on the ground that the Quebec Act had restored the lands to England and "Virginia had a right to what she conquered with her own arms, and the United States had a right to all the rest of that country by conquest." On May 26, Congress voted to accept the proposed cession when properly made.

Because of their insight into the political situation of the time two quotations deserve to be given in full. On May 28, Grayson wrote to Madison as follows: "The delegation of our state was very much embarrassed with the Connecticut business, as it was said it was but neighbor's fare that Connecticut should be treated as we had been before with respect to our cession; and that cessions of claims conveyed no right by implication to the territory not ceded. We, however, after some consideration, took a hostile position toward her, and voted against the acceptance in every stage of it; it appeared to the delegation that the only proper claim had already been vested in congress by the cession of our state; and that their cession was nothing but a state juggle contrived by old Roger Sherman to get a side-wind confirmation of a thing

[3] Thomas Rodney's Report of Debates in Congress. Bancroft, I., 500.

they had no right to. Some of the states, particularly Pennsylvania, voted for them on the same principle that the powers of Europe give money to the Algerines. The advocates for the acceptance have, however, some plausible reasons for their opinions, such as the tranquillity of the union; the procuring a clear title to the residue of the continental lands; the forming a barrier against the British as well as the Indians; the appreciating the value of the adjacent territory, and facilitating the settlement thereof.

"The assembly of Connecticut now sitting mean immediately to open a land office for the one hundred and twenty miles westward of the Connecticut line, which they have reserved; and I don't see what is to prevent them from keeping it always, as the federal constitution does not give a court in this instance; and a war with them would cost more than the six millions of acres are worth." [4]

On June 16, Monroe wrote to Jefferson: "We have had generally not more than seven states present; the only time that nine were, their time was employed upon the subject of the Connecticut cession, which ultimately was accepted, whereby she ceded all the land lying westward of a line to be drawn westward of the Pennsylvania line parallel with the same. Our state voted against it but were in sentiment for it. It is hoped it will terminate the variance respecting the Wyoming settlement by enabling Connecticut to give the claimants other

[4] Quoted in Bancroft, I., 505.

land in lieu, and thereby establishing the government of Pennsylvania in the benefit of the decree of Trenton. Other reasons there are which apply to the geographic position of the land, and the influence that consideration may have in the councils of Connecticut. We voted against it, under the sentiment upon which our state hath acted of her right to the northwest line from the northern extremity of her charter limits, which we suppose should be regarded even after the right was given to the United States by the delegation." [5]

These letters shed enough light upon the reasons which influenced Congress in accepting the Connecticut cession. That State could indeed feel that she had won a substantial victory. She had secured a ratification of her charter claims—so far as the acceptance could be considered a ratification—and she had retained some three and a third million acres in a region already covered by the cessions of New York and Virginia.

Connecticut proceeded to dispose of the lands in her "reserve." Five hundred thousand acres were donated for the use of her citizens who lost their property when the British burned the towns of Danbury, Fairfield, Norwalk and New London. These were known as "The Sufferers' Lands" or "The Fire Lands." Although the grant was made in 1792, the Indian title was not extinguished by the Federal government until 1805, the surveys

[5] Bancroft I., 510.

were then made and the first "drawings" took place in 1808.

Although the state placed on sale the eastern part of the reserve in 1786 conditions on the frontier were too unsettled to warrant many purchases. The balance, estimated at four million, but actually less than three million acres, were sold on September 9, 1795, to a company for twelve hundred thousand dollars, which was set aside as the basis of the Connecticut school fund.[6]

Connecticut had retained the jurisdiction over her reserve, and in 1796, when settlement advanced into that region, this began to cause trouble. Connecticut failed to erect a local government there, nor did she think it desirable to govern a tract of land at least three hundred and fifty miles from her borders. Governor St. Clair, of the Northwest Territory, considered that his jurisdiction extended over the region. Some government was necessary, and as Connecticut did not care to provide it, now that she had disposed of the soil, she turned to the Federal government and in October, 1797, tendered the jurisdiction over the reserve to the United States. At that session the Senate discussed the question, and at the next session passed a bill of acceptance, but the House postponed action. On April 28, 1800, an act was finally passed after a considerable debate, which unfortunately is not recorded. But the objections must

[6] The Land System of the Western Reserve. New England Magazine, v. 2.

have been much the same as those in 1786. John Marshall, chairman of the House Committee, advised acceptance.[7] In the Senate an amendment was offered for the purpose of deciding the title of Connecticut to the Western Reserve in the Supreme Court, but it was defeated by a vote of fifteen to ten. The reasons which led to the acceptance of the cession in 1786 held when Connecticut offered the jurisdiction of her reserve in 1797.

Under the Act of 1800 Connecticut had to renounce all claim to lands west of her present limits, except to lands in the Western Reserve, and expressly cede the jurisdiction over the latter to the United States. In return the President was authorized to issue to the Governor of Connecticut a patent for the lands in the reserve. In this way the United States gained jurisdiction over the Western Reserve and the holders of land there under Connecticut deeds secured a confirmation of their holdings from the United States.

The Virginia Military Reserve

Virginia based her claim to Western lands upon two grounds, her ancient charter and the conquest of a portion of the Northwest by George Rogers Clark. According to her second charter, that of 1609, her territory extended two hundred miles north and south of Point Comfort and included the back country from sea to sea, "west and northwest." It was the determination of these "west

[7] P. L. I., 94.

and northwest" lines which caused trouble later.[8] If the west line was extended from the northern point on the coast, and the northwest line from the southern, then Virginia would be shaped like a triangle; but if the lines were reversed, then she would be a great trapezoid in shape, with an extensive coastline on the Pacific, interfering with the later sea-to-sea claims of Massachusetts and Connecticut. The Virginians accepted the latter view at the time when claims to the Western lands were being pressed, and if they had their way they would be entitled to almost all of the Northwest. But there were those who held that all the claims to that region were nullified by the Quebec Act of 1774. If that was the case, then Virginia claimed the country northwest of the Ohio by reason of the expedition of George Rogers Clark and his frontiersmen in 1779. But this claim only applied to the territory south of Michigan.

It may have sounded valid enough in 1781, but at this day it seems most extraordinary that one of the United States should set up a claim to territory acquired by her troops during the Revolution. To be sure, Clark was commissioned by Governor Henry and the expenses of his expedition were largely met by the State of Virginia, but the conquest of Vincennes and Kaskaskia was a part of the great struggle and its ultimate success depended upon the general result. If Massachusetts and South Carolina and the other coast States had

[8] Hinsdale (1899), 73.

failed in their endeavors, Virginia would have had no opportunity to lay claim to the Northwest by conquest. As an exploit, the expedition of Clark deserves the highest praise, but it is difficult to really believe that through it the State of Virginia came into possession of any territory to which she did not already have a valid title. The wisdom of Congress in accepting the cession of all claims without passing upon their validity has already been pointed out.

When the Virginia cession was finally completed in 1784 certain conditions were incorporated in the deed. The United States was to pay the expenses of Clark's expedition and occupation; the French settlers who had professed themselves to be citizens of Virgina were to be protected in their rights; the land promised by Virginia to Clark and his men, at least one hundred and fifty thousand acres, was to be located in the ceded territory; and any deficiency in the lands granted in Kentucky for military bounties should be made up in the region between the Scioto and Little Miami rivers. Then followed the well-known condition as to the disposal of the rest of the cession.[9]

[9] Another condition provided that the territory ceded should be laid out into states of not less than one hundred nor more than one hundred and fifty miles square. These areas were much smaller than seemed desirable to Congress, so in 1786 Virginia was asked to assent to the formation of from three to five states instead. Virginia passed the desired act on December 30, 1788, in the form of a ratification of the compact in the Ordinance of 1787 in so far as it established boundaries for the new states.

All of these specific conditions were eventually complied with. The tract for Clark's men was located near the falls of the Ohio, in the present State of Indiana.[10] The possessions of the French settlers were respected and their land claims were generously confirmed.[11] But the questions arising out of the Virginia military reserve caused an unexpected amount of trouble.

In the first place, the clause was carelessly drawn. In the Virginia offer of January 2, 1781, the clause provided for Virginia troops upon the Continental establishment and upon the State establishment.[12] But the provision for the troops of the State line was omitted from the resolutions which were presented to Congress, and this omission was carried over into the formal deed of 1784.[13]

Then again, the reservation was indefinite in amount. The land bounties offered by Virginia to her Revolutionary soldiers were indeed generous. In 1776, 1777, and 1778, the State found

[10] English, Conquest of the Country Northwest of the River Ohio. II., 825-860.

[11] See ch. 9.

[12] Hening, X., 564.

[13] During the Revolution each State supplied troops for the Continental forces, and also maintained regular State troops—the State line—militia, and irregular forces. The national bounty lands were originally offered only to soldiers of the Continental line. Virginia had sixteen regiments on the Continental establishment, three regiments of State line, two Western regiments, and a navy of twenty or twenty-five vessels. P. L. VIII., 583. Confusion frequently arises because the Continental troops were raised by States.

that a money bounty, in addition to the Congressional bounties, was sufficient. But in 1779 and 1780 money, land and, finally, slaves were offered. In the latter year, for example, a private enlisting in the Continental line for the war was to receive twelve thousand dollars (in depreciated paper), and, at the end of the war, a sound negro between ten and thirty years of age or sixty pounds in gold or silver, and three hundred acres of land. Doubtless a few lukewarm patriots were enlisted under such circumstances. At first the bounties were offered to men enlisting in the Continental forces, in addition to the Congressional bounty, but finally all troops, State and Continental, army and navy, were placed upon the same footing. The land bounties finally stood as follows: Major-general, fifteen thousand acres; brigadier-general, ten thousand acres; colonel, six thousand six hundred and sixty-six acres; lieutenant-colonel, six thousand acres; major, five thousand three hundred and thirty-three acres; captain, four thousand acres; subaltern, two thousand six hundred and sixty-six acres; non-commissioned officer (enlisting for the war), four hundred acres, (for three years) two hundred acres; private (for the war), three hundred acres, (for three years) one hundred acres. And an increase of one-sixth for each year's service over six. Baron Steuben, who did not belong to any State line, was granted fifteen thousand acres. He also received two thousand from Pennsylvania and eleven hundred from Congress.

And other special or "resolution" grants were made for distinguished service.[14]

In December, 1778, a military reserve was set apart in Kentucky, between the Greenbrier River, the Carolina line, the Tennessee River and the Ohio,[15] but as some of this reserve was found to lie in North Carolina's western lands the bounds were extended to the westward as far as the Mississippi. In 1783 the surveyors were authorized to locate warrants in the Ohio country, between the Scioto and Little Miami rivers, after the good land in Kentucky was exhausted, and the deed of cession of 1784 contained the same stipulation. Only when no more "good lands" could be found south of the Ohio were warrants to be located in the Ohio country. But as the surveys were irregular in shape and designed to cover as much good land as possible without a proportionate amount of the bad, and as the larger warrants could be divided and located on different tracts, it was evident that there would not be enough "good land" in the Kentucky reserve to satisfy the splendid bounties of Virginia.[16] And the matter was further complicated by the Indian titles in Kentucky.[17] It

[14] The Act of 1780 which increased the bounty of soldiers serving for the war to three hundred acres was overlooked and not acted upon until it was noticed in 1822 by Hening. The warrants issued before that date read two hundred acres. See Hening, X., 331 n.

[15] Hening, X., 50.

[16] The act of 1783 allowed six surveys to a general, five to a field officer, and four to a captain or subaltern. Hening, XI., 309.

[17] In order to prevent trouble with the Indians the Governor of Virginia ordered the suspension of surveys on Jan. 6, 1785.

was not until 1818 that the rights of the Chickasaws to the lands between the Tennessee and the Mississippi were extinguished, and at that date the State of Kentucky had prohibited the location of Virginia warrants within her limits.

The Congress of the Confederation early took measures to protect the rights of Virginia to the reserve in Ohio. The proposed land ordinance of 1784 contained a clause to the effect that Virginia laws should govern the granting of bounty lands there. When this ordinance came up in amended form in 1785 it simply confirmed the Virginia troops in their rights under the deed of cession. A general debate arose over the construction of the Virginia deed of cession, and an effort was made to bring the reserve under the general land system, so that the rectangular surveys would be used there, but this did not come to a vote.[18] It was finally decided to reserve all the land between the two rivers until the Virginia claims were settled.[19] It would have been a great blessing for the Virginia veterans and for the State of Ohio if the system of rectangular prior surveys had been introduced.

But until a deficiency was proven in the bounty lands in Kentucky no warrants could be located north of the Ohio. Congress took occasion to point this out in 1788, when it stated that all locations and surveys would be considered void until the

[18] Bancroft, I., 435. Grayson to Madison, May 1, 1785.
[19] J. IV., 510.

deficiency south of the Ohio had been ascertained, and it requested the Governor of Virginia to find out the amount of land needed, so that Congress could lay out the proper amount and dispose of the balance.[20]

That was a rather difficult problem for the Governor of Virginia to meet, for even to-day it is not possible to determine how much land was required for the satisfaction of Virginia's Revolutionary bounties. Instead of waiting for the Governor to indulge in estimates Congress accepted the statement of the agents of the soldiers and proceeded to open the Virginia reserve to locations. This Act of August 10, 1790, was the first act of the new Congress relating to the disposal of the public lands. It was not until 1796 that the United States' military bounty lands were set apart, and the first locations were allowed in 1800. And it was in 1796 that the first act for a general sale of lands was passed. These facts show how carefully Congress tried to live up to the terms of the Virginia cession.

The Act of 1790 looked toward a rapid settlement of the claims. The Secretary of War was to report to the Governor of Virginia the names of all men entitled to bounty lands. Then the agents of these troops were to select enough land north of the Ohio to satisfy, with the lands in Kentucky, all the claims of the Virginia troops on the Continental establishment. The agents were

[20] July 17, 1788. J. IV., 836.

to locate the warrants and file the entries with the Secretary of State. The President then caused the patents to be made out, but they were to be delivered by the Governor of Virginia.

This act was not considered satisfactory by certain of the Virginia soldiers, and on their protests the State Legislature memorialized Congress.[21] The act was therefore amended, in 1794, so that patents might issue to the assigns of officers and soldiers, and the method of securing that document was changed.[22] After that date a person producing a warrant, a certificate from the proper State officer that the warrant remained unsatisfied, and a survey according to the laws of Virginia, would receive a patent from the President. This meant that the troops or their agents crossed the Ohio to the Virginia military district and located their warrants wherever they found land which was apparently unappropriated. Certain surveyors in the Virginia military districts became great landholders through their services, for land was about the only means some of the warrant holders had of paying for their surveys. It took but a short time for the evils of the Virginian system of locations to appear in her reserve in Ohio. As early as 1800 Congress provided that when patents conflicted the loser might withdraw that much of his warrant and locate elsewhere in the reserve. The constant litigation in the Virginia military reserve in Ohio was

[21] P. L. I., 17. [22] June 9, 1794.

enough to impress people with the value of the national land system.

The Virginia warrants were being located so rapidly in Ohio that in 1804 Congress felt called upon to define the western bounds of the reserve. The Scioto River proved to be much longer than the Little Miami, and its source was found to be actually west of the latter stream. In 1802 a line was run by William Ludlow from the source of the Little Miami toward the Scioto as far as the Indian boundary line.[23] This survey was accepted by Congress in 1804; the lands west of the line were then surveyed and sold under the regular system.[24] But Virginia was allowed two years in which to accept the boundary line, and as she failed to act the question rested until 1812, when Congress authorized the appointment of commissioners to meet with those of Virginia for the determination of the proper line, but until they could come to some agreement the line of 1804 was to be accepted as proper.[25] The commissioners could not agree, those from Virginia holding that the line should run from the source of the Scioto to the *mouth* of the Little Miami, which would be entirely to the west of the latter stream. The Federal commissioners, therefore, instructed Charles Roberts to run a new line between the sources of

[23] P. L. IV., 785. If continued it would not have struck the source of the Scioto.

[24] March 23, 1804, ch. 33.

[25] June 26, 1812, ch. 109.

the two streams.[26] This line was fifty-three miles long and would include in the reserve about fifty-five thousand acres of land left out by Ludlow. As Virginia did not agree, the Ludlow line remained in effect according to the Act of 1812, but in 1818 Congress established a new boundary, namely, the Ludlow line to the old Indian boundary line, and the Roberts line from the Indian boundary to the source of the Scioto.[27] The Indian title to the land beyond the old Greeneville line was extinguished in 1817.

In the meanwhile Virginia warrants had been located on lands sold by the United States between the two lines, so in 1824 an agreed case was decided by the Supreme Court which was held to establish the Roberts line.[28] The court had to determine whether a patent based on purchase from the United States or one based on a Virginia warrant should be recognized between the two lines. As the patent in question was secured before the Act of 1812 it very naturally decided in favor of the Virginian claimant, but later this decision was advanced as a ruling in favor of the Roberts line, although that general question was not before the court.

For a number of years this question was before Congress, and finally, in 1830, an appropriation of $62,515.25, with interest from 1825, was made to quiet the claims of persons who had located Vir-

[26] P. L. II., 735. [27] April 11, 1818, ch. 47.
[28] Doddridge's lessee v. Thompson and Wright. Wheat, 469.

ginia warrants between the two lines south of the Indian boundary line, and to this amount $1,765.68 was added the next year.[29]

While the question of the proper western boundary of the Virginia reserve was under discussion, another question was presented to the consideration of Congress. That was the request that Congress permit holders of warrants for services in the Virginia State troops to make locations in Ohio. This was based on the original offer of Virginia, although it had not been inserted in the deed of cession. A favorable report on this request was made to the House in 1812, and from that time until 1830 there were reports and debates on the subject.[30] The United States could not be held to satisfy these claims, but as the omission was apparently an oversight, and as there had been difficulty in securing land in Kentucky, Congress finally decided to grant the long-desired permission. This was done in 1830 by an act which permitted all holders of unsatisfied military warrants, whether from the United States or from Virginia, for services either in the Continental forces or in her State line or navy, to exchange them for scrip certificates of eighty acres each, receivable for land open to private entry in Ohio, Indiana, and Illinois.[31] This act appropriated two hundred and sixty thousand acres in scrip for the

[29] P. L. IV., 66. Negotiations commenced in 1824. May 26, 1824, ch. 188. May 26, 1830, ch. 105. Feb. 12, 1831, ch. 19.

[30] P. L. II., 446.

[31] May 30, 1830, ch. 215.

Virginia line, and fifty thousand acres for the Virginia troops on Continental establishment. In 1832 three hundred thousand acres were added, two hundred thousand in 1833, and six hundred and fifty thousand acres in 1835, for the two establishments. The Act of 1833 made this scrip receivable for any land open to private entry.

The various appropriations of scrip for the troops of the State line were not sufficient to meet the demand. In 1832 a great mass of Revolutionary documents was found in the attic of the Capitol at Richmond, and on this evidence were based many of the new claims.[32] Although the holders of warrants for services in the Continental line could still locate them in the Virginia reserve, no provision of scrip was made for the State line between 1835 and 1852. At that time Congress agreed to exchange scrip for all Virginia warrants issued before March 1, 1852.[33] This was accepted by Virginia as a full adjustment of her bounty claims, and she accordingly relinquished all claim to the balance of the Virginia military reserve. The unappropriated lands in this district, amounting to 76,735.44 acres, were ceded to Ohio by the Act of February 18, 1871, and Ohio turned the lands over to the Ohio Agricultural and Mechanical College.[34]

[32] P. L. VIII., 562. [33] Aug. 21, 1852, ch. 114.

[34] Donaldson, 233. See House Miss. Doc. No. 10., 47 Cong. Sess. 2.

It required thirty-four acts of Congress to provide for the bounty claims of Virginia, aside from special legislation. Many of these acts were unnecessary. The Act of 1804 endeavored to expedite the location of warrants by stipulating that all locations must be completed within three years after the passage of the act, and the surveys and warrants returned to the Department of War within five years. All lands which were not located upon in that time were to be thrown open to public sale. But if such action was highly desirable, it was of doubtful legality. Virginia had not agreed to have her warrants satisfied within a fixed time and the right of Congress to insert such a time limitation was questioned. But Congress did not insist upon its own terms. It repeatedly extended the time for securing warrants, making locations, and returning the surveys, generally for two or three years. At various times it was not possible to locate warrants within the district until an act of Congress would permit the location for a limited period. From 1841 to 1850, for instance, the time extension only applied to warrants which had been issued before August 10, 1840, but between 1850 and 1852 any warrant might be located. From the latter date the right was limited to warrants which had been entered within the district before January 1, 1852, and persons holding such were finally allowed until May 27, 1883, to return the surveys, certificates and warrants, and to

receive their patents, for it was found that lands in the Virginia reserve had been occupied for years without the completion of title. In 1882 persons who had occupied lands for twenty years under a Virginia warrant which had at any time been entered at the land office were confirmed in their titles. It is still possible to offer the scrip issued for the Virginia bounty warrants, under the Act of 1852, in payment for public lands, but the right to exchange outstanding warrants for scrip ceased on March 3, 1900, by an act of 1899.[35]

It has been shown that Congress more than carried out the terms of the Virginia deed of cession. Virginia received, north of the Ohio, the one hundred and fifty thousand acre tract which she had promised to George Rogers Clark and his men.[36] She received the lands in the reserve, some 3,770,000 acres—and the reserve tract proved to be larger than was anticipated in 1784. Under the early scrip acts some 1,460,000 acres were appropriated, and under the Act of 1852 scrip amounting to 1,068,753 acres has been issued to the present time. A minimum estimate would place the amount of land granted by the United States on account of the Virginia bounties at 6,300,000 acres, and only about half of this was located within the stipulated reserve in Ohio. Whether her claim to the Northwest was better than that of the other

[35] March 3, 1899, ch. 424.

[36] In 1858, 6666⅔ acres were granted to the heirs of Col. Archibald Loughry, who was killed by the Indians on his way to join Clark.

States or no, Virginia received more direct benefit from the cession than any other State.[37]

The North Carolina Cession

In terms of dollars and cents the North Carolina cession, when finally completed, was the least advantageous of all, for the Federal government derived scarcely a penny of land revenue from the ceded territory. But in many ways the cession was the most interesting of all, from an historical point of view.

The Carolinas claimed the land west of their present limits by virtue of the charters of 1663 and

[37] An act of grace on the part of Congress which did not come under the terms of the Virginia cession, was the relief extended to the heirs of Col. Charles Porterfield. He had served with distinction during the Revolution and had been slain in the latter part of the war. His son, Robert, received a warrant for six thousand acres in 1782, and one for 2,666 as assignee for Thomas Quarles, another veteran. These were located in 1784 in Kentucky, in five entries. The land was then in possession of the Chickasaw Indians and was not available until 1818. Kentucky issued patents to Robert Porterfield in 1824, but the lands were also claimed under Virginia treasury warrants located by George Rogers Clark in 1780 and 1781. Porterfield sued Meriwether Clark in 1836-1841, but lost the action in the United States Circuit Court and the Supreme Court. Some 6133 acres were involved, and in 1860 Congress authorized the issue of scrip to the heirs of Robert Porterfield for that amount. This was done on the ground that Virginia would have made good the loss resulting from these conflicting locations if Virginia had any land available at the time, but Virginia had ceded her western lands to the United States, therefore the United States should act as Virginia would have done. It is well that this action was not taken fifty years earlier or the United States would have been called upon to satisfy many warrants whose locations were nullified by conflicting claims in Kentucky. One hundred and fifty-three warrants for forty acres each were issued to the heirs of Robert Porterfield and twenty-one of them were unlocated in 1900.

1665. No other State claimed these lands, in contrast to the tangle of claims in the Northwest, although the terms of the Proclamation of 1763 might be cited in opposition. Before the Revolution, and during that struggle, settlement extended beyond the mountains, so that at the time the land cessions were under discussion North Carolina could support her claim by actual occupation. In 1777 she had opened a land office which dealt principally in lands in Tennessee, and in 1780 she set aside there a tract for the satisfaction of her military bounties. With the close of the war the settlements beyond the mountains began to grow rapidly.

On March 1, 1784, the Virginia cession was completed, and on the 2d of June the North Carolina Legislature passed an act of cession of her western lands.[38] This act contained some general conditions and gave Congress twelve months in which to accept the offer.[39] At the same time the land office was closed pending the action of Congress. It was the news of this cession that caused the settlers of the western counties to set up the independent state of Franklin, which sought admission into the Union between 1784 and 1787.[40]

38 J. IV., 523. N. C. Recs. 24: 561.

39 Most accounts, following Ramsey, 283, state two years, but compare the Act and the statement in J. IV., 523.

40 For this section see Roosevelt, Winning of the West, vols. 1-3; G. H. Alden, "The State of Franklin" in A. H. Rev. 8: 271-289; Turner, "Western State Making in the Revolutionary Era," A. H. Rev. 1:70-87; G. H. Alden, "New Governments West of the Alleghanies before 1780." Bulletin of Univ. of Wisc., vol. 2, No. 1, 1897.

This independent action of her western settlers apparently caused the Legislature at the next session, in November of the same year, to repeal the act of cession, although that was not the reason assigned in the repealing measure. It really is worth quoting in full, because of the light it sheds upon the inter-State relations of the times. "Whereas, the cession so intended was made in full confidence that the whole expence of the Indian expeditions and militia aids to the State of South Carolina and Georgia should pass to account in our quota of the continental expences incurred by the late war: and also that the other states holding Western territory would make similar cessions, and that all the states would unanimously grant imposts of five per cent. as a common fund for the discharge of the federal debt: and, whereas, the States of Massachusetts and Connecticut after accepting the cession of New York and Virginia have since put in claims for the whole or a large part of that territory, and all the above measures for constituting a substantial common fund, have been either frustrated or delayed," therefore the act of cession is repealed.[41] If the other States had acted in the same "liberal" manner there would have been anarchy in the Northwest, for the New York and Virginia cessions had been completed and those of Connecticut and Massachusetts were pending. Fortunately, the conduct of North Carolina was not taken as a desirable example. Congress, however, took cog-

[41] N. C. Recs. 24:679.

nizance of the two acts of North Carolina. A committee appointed to examine them reported that the State had no right to repeal the first offer and that, therefore, Congress could accept the cession within the twelve months specified.[42] But this report could not be adopted, although all the delegates from the States north of Maryland voted for it. A resolution did pass, however, requesting North Carolina to repeal her second act and to direct her delegates in Congress to execute a deed of cession.

North Carolina failed to accept the recommendation, and thus the matter rested until after the new government under the Constitution had been established. In that period North Carolina had been granting lands in Tennessee, and 35,691 persons were resident there in 1790. The failure of North Carolina and Georgia to cede their lands must have occasioned no little ill feeling on the part of the five States which had made cessions under the Confederation. But toward the close of 1789 North Carolina acted,[43] and on April 2 of the next year Congress passed an act of acceptance. At the same session the ceded region, with the South Carolina strip, was organized as the Territory South of the River Ohio.

The North Carolina cession was based upon certain conditions, principally to the effect that the State military bounties should be satisfied and all

[42] J. IV., 523-24. [43] Dec. 22, 1789. N. C. Recs., 25:4-6.

rights and entries to land under North Carolina laws should be preserved.[44] As the Indian title had been extinguished over but a small portion of the state there was reason to believe that North Carolina had ceded to the Union the preëmption of a considerable quantity of very good land. The question, therefore, was to determine how much land had been sold or given away by North Carolina prior to the cession.

A study of the North Carolina bounty laws showed that she had been most generous in her treatment of her troops on the continental establishment. Beginning in 1780 with a bounty of $500 a year, 200 acres of land and a prime slave for those who would serve for three years or the war, she had been forced to increase the money and land bounties until in 1782 she made a substantial recognition of the services of the troops who might continue to the close of the war.[45] These bounties rose from 640 acres for a private to 12,000 acres for a brigadier; a captain, for example, receiving 3850 acres. Major-General Nathanael Greene was given 25,000 acres in consideration of his distinguished services in defense of the state. Such grants would appropriate a great amount of land, and the surveys under these warrants were bound to cause trouble. General Greene's tract was surveyed in March, 1783, and by the act of the next year it was

44 North Carolina reserved the right to complete all grants and imperfect titles. Conflicting entries could be relocated.

45 N. C. Recs., 24:419-422.

confirmed to him.[46] The boundaries are typical: "Beginning on the south bank of Duck River, on a sycamore, cherry tree and ash, at the mouth of a small branch, running thence along a line of marked trees south seven miles and forty-eight poles to two Spanish oaks, a hicory (*sic*) and sugar sapling, thence east three miles and ninety poles to a Spanish oak and hackberry tree, north three miles and three hundred poles to a sugar tree sapling and two white oak saplings, under a clift of Duck River whence it comes from the northeast, thence down Duck River, according to its several meanders to the beginning."

Soon after the cession was completed Congress asked the President to prepare an estimate of the unclaimed lands in the North Carolina cession and in the Northwest Territory.[47] Jefferson, the Secretary of State, prepared the report which showed that all the habitable lands free of the Indian title had been appropriated, while on the lands acquired since the cession, at the treaty of Holston, in 1791, some three hundred families had already located without permission. And the matter was further complicated by the fact that the treaties of Hopewell, 1785, and Holston, 1791, had confirmed to the Cherokees certain lands on which North Carolina warrants had been located, the holders of which desired relief.[48] It was a matter of some importance that these claims in Tennessee be

46 N. C. Recs., 24:570.

47 P. L. I., 22.

48 P. L. I., 30, 33, 78, 102, 108, 123, etc.

settled in some way lest the settlers or squatters come to blows with the Indians. With the admission of Tennessee in 1796 a new factor was added for there were those who held that the new state acquired the right of soil as well as the right of jurisdiction.[49]

In the meanwhile North Carolina continued to perfect outstanding grants by extending the time in which they could be surveyed, registered, or paid for, and in the case of military warrants the time for the survey was also extended. Laws were also passed to meet the frauds which were being committed in the "issuing, procuring, receiving, or transferring land warrants."[50] In 1803, Tennessee appointed five commissioners who, with those to be appointed by the United States, would have full power to determine all interfering claims of the United States and Tennessee to vacant lands within the latter state.[51] And in 1805 Congress was asked to assent to an Act of North Carolina which would permit Tennessee to issue grants and perfect titles under the land laws of the former state. The situation in Tennessee was becoming very interesting. The first of the "public land states" she found her mother state engaged in disposing of her lands—under the form of earlier grants to be sure—while the Federal Government would have possession of any land which might

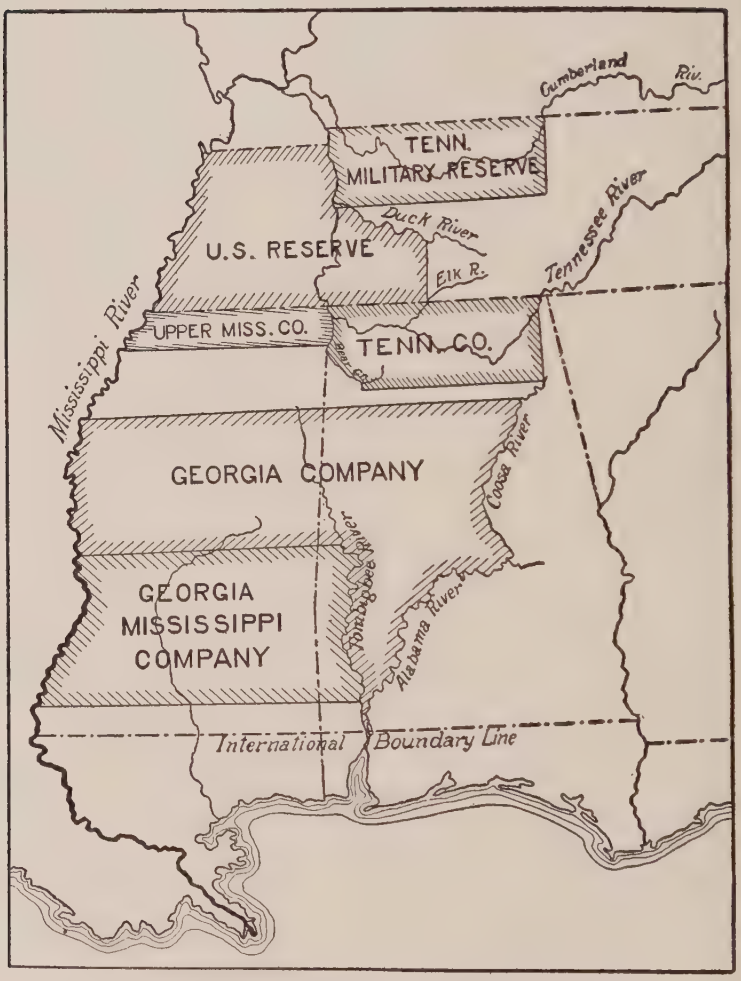
[49] P. L. I., 109.
[50] For summary of N. C. laws see P. L. I., 211-13.
[51] P. L. I., 162.

escape the North Carolina grantees. To the north Kentucky had for some time been disposing of her own lands.

It was under these circumstances that the unique act of 1806 was passed by Congress.[52] This offered to cede to Tennessee the title of the United States to all lands in the eastern two-thirds of the State if the State would agree to relinquish its title to the other lands and to exempt the lands of the United States there from all taxation before and for five years after sale. This clause gives the impression that the State might had some "right, title, and claim" to the lands in question. The same clause gives the assent of Congress to the North Carolina act of 1803.

But this cession of the United States was based upon certain conditions. In the first place all unsatisfied entries, rights, and warrants of North Carolina which were not actually located in the tract reserved for the United States before February 25, 1790, must be satisfied in the tract ceded to Tennessee. That state also was to appropriate 100,00 acres of land for two colleges, one in East and one in West Tennessee, and 100,000 acres for the use of academies, one for each county of the State. These lands were to be set apart in the region reserved for the Cherokee Indians by North

[52] April 18, ch. 31. The line began where the eastern branch of Elk River intersected the southern boundary of Tennessee, then due north to the northern branch of Duck River, thence down Duck River to the North Carolina military reserve, thence west to the Tennessee and down that river to the Kentucky line.



TENNESSEE AND MISSISSIPPI TERRITORY

Carolina and therefore it was not believed the land could be claimed by individuals. And in addition the State was to locate six hundred and forty acres for every six miles square of territory for the use of schools.

In this way Congress tried to provide for Tennessee the grant of one section in each township for education, but as the rectangular surveys were never extended over Tennessee it was an easy matter to neglect this requirement. Finally Congress provided that if there were not enough good land in the Tennessee portion for perfecting all legal claims then they might be satisfied in the tract reserved for the United States.

This act surely deserves to be called unique. In it the United States transferred to Tennessee most of the obligations it had assumed under the North Carolina cession, but it did so with the assent of the latter State. In some respects the act was like the Ohio Enabling Act, for lands were granted for schools, seminaries, and colleges, and the State agreed not to tax Federal lands until five years after sale. But the form of the act, providing for an instrument to be signed by the commissioners of the State of Tennessee gave color to the idea that it was a more formal bargain and that the State really had some right to all the lands within its boundaries.[53] It should be noted that Tennessee was to receive more lands for colleges than Ohio, while the latter State had not been given

[53] Agreement signed Jan. 23, 1807. P. L. I., 584.

seminary lands. As a matter of fact these grants were mostly on paper.[54]

It would be too much to expect that the Act of 1806 could settle definitely the tangled land claims in Tennessee. Here was an excellent example of the confusion resulting from the old southern system. Warrants, entries, location, and surveys were frequently in conflict. And the system lent itself to fraud. What was needed was the extension of the national land system over as much of Tennessee as possible, and this seemed feasible because the Indian title had not been extinguished in the Congressional reserve.[55]

But with the extinguishment of the Indian title Congress could not act, because it had promised to perfect all legal claims to land within its reserve in case sufficient land should be wanting in Tennes-

[54] For a discussion of these grants for education see L. S. Merriam, Higher Education in Tennessee, Bureau of Education, Circular of Information, No. 5, 1893. The college grants were divided between the Cumberland College (later the University of Nashville) and the East Tennessee College (later the University of Tennessee). When an attempt was made to locate the lands it was found that squatters claimed preëmption on practically the entire available area. They were allowed to purchase their lands at $1 an acre in ten equal annual payments, and later the time of payment was frequently extended, so that little was secured for the colleges. In 1838, the Universities accepted from the state a half-township of land, 11,520 acres, each, in lieu of their claims under the Congressional grant. Apparently the only seminary to receive aid under the seminary grant was the Hampden Sidney Academy at Knoxville. No lands were set apart for schools.

[55] Title to the country between the Tennessee and the Duck rivers acquired from the Cherokees in 1806, and from the Chickasaws in 1816, west of the Tennessee River from the Chickasaws in 1818.

see's reserve. It, therefore, had to wait until all existing claims had been satisfied, or it was evident that they could not be satisfied by Tennessee. But now the matter was complicated by the position taken by North Carolina. She objected to the provision in the Act of 1806 which would allow incomplete entries and interfering locations to be perfected only on the Tennessee reserve, and under her act of 1811 she commenced the next year to make surveys and issue grants in the Congressional reserve.[56] Tennessee protested against this action of North Carolina and forbade further surveys by an act of 1812 and asked that she be given the power to perfect the grants in the region in question.[57]

To meet this three-cornered controversy Congress, in 1818, gave Tennessee permission to complete grants west of the dividing line, but tried to reserve lands within the Indian boundary line.[58] Tennessee was also permitted to perfect the grants obtained from North Carolina in 1812, provided they were valid. About the same time a decision of the Supreme Court held against the right of North Carolina to make further grants in Tennessee.[59]

Under the Act of 1806 Tennessee was bound to sell the land in her reserve at a price equal to the prevailing price of public lands, although a preemption at $1.00 an acre was allowed in certain

[56] P. L. III., 274. [57] P. L. III., 287.

[58] April 4, 1818, ch. 35. The Chickasaw treaty was Oct. 19.

[59] Burton's Lessee v. Williams, et al. 3 Wheaton, 528.

parts. With the reduction of the minimum in 1820 Tennessee could reduce her price. In 1823 this limit was removed and Tennessee could charge whatever she desired. Much of her land was then offered at as little as 12½ cents an acre.[60]

For twenty-five years more the question of the Tennessee lands was before Congress. The North Carolina grants were extensive and the good land was rapidly being taken up. In 1829 it was reported that although 2,353,824 acres remained unappropriated in the Congressional reserve it was principally "refuse land," which had been picked over for years and was probably worth from 12½ to one cent an acre.[61] The expense of bringing these vacant lands into the national system would be great because the region was so cut up by the surveys under the North Carolina warrants. Tennessee had laid off the tract in townships five miles square, like those in the Ohio Military reserve.[62]

[60] Feb. 28, 1823, ch. 19. [61] P. L. VI., 32.

[62] "The claimant or holders of warrants were not required to take up the land by sections, quarter sections, or in any other regular form of surveying, adjoining section or range lines, and so as to include a portion of the poor with the rich land; but each claimant explored the country for himself, or by his agent, and made his own location, selecting, of course, the best land within his knowledge, and so making his survey to exclude, as far as practicable, the sterile and to include the fertile lands. The North Carolina claimants were promised land fit for cultivation, and to enable them to obtain it, a division of warrants was authorized by law; the consequence of which has been that locations and entries upon warrants of all sizes, from one to 5,000 acres, have been made upon the land in question, and in surveys of every imaginable shape—surveys even of small tracts of land having, in many instances, a dozen or more offsets and corners." P. L. VI., 356. See map of a typical township.

After several reports had been submitted on the vacant lands in Tennessee, Congress apparently decided that it was not worth while to bring them under the national system, but it delayed making any other provision for them. Finally, in 1841, it made the State of Tennessee its agent for the disposal of the unappropriated land.[63] In the first place, Tennessee was to perfect the outstanding North Carolina warrants, but in order to expedite the process these must be located within one year, or else during the next two years they could be redeemed at 12½ cents an acre. Persons entitled to a preëmption under the laws of Tennessee were confirmed in that privilege for not more than 200 acres at 12½ cents an acre. Finally, the unappropriated lands were to be offered for sale for three years at 12½ cents an acre, and for the next three years at any price. But Tennessee was to pay over to the United States all sums above the amount required to satisfy the North Carolina claims.[64]

This act provided for the sale of lands in the Congressional Reserve, but it was not to be expected that the other details of the act would be carried out. It was not customary for terms such as these to be insisted upon by the Federal Government. So in 1846 the United States turned over to Tennessee all the unappropriated lands in its former reserve as well as the amount due for

[63] Feb. 18, 1841, ch. 7.

[64] I can find no record of any payments being made.

lands sold there,[65] in full satisfaction of the expenses incurred by the state in managing the said public lands as the agent of the United States. Tennessee, in turn, was to appropriate $40,000 of the proceeds for a college at Jackson, or as much as the lands might bring less than that sum, and outstanding North Carolina claims were to be provided for.[66]

In this way, fifty-six years after the deed of cession, the United States finally turned its obligations over to the State of Tennessee, for by that time Tennessee surely had gained considerable experience in dealing with North Carolina warrants.

The North Carolina cession, therefore, had vested in the United States a jurisdiction which it, in turn, had in 1796 transferred to the State of Tennessee. The ceded lands never came under the national land system and only 640 acres were ever sold directly by the United States.[67] And the grants for education, which the Federal government tried to make, failed because the State would not protect them from private exploitation. Tennessee, however, did not fare any too well in this matter. To be sure the Federal Government finally turned over to her all the vacant lands within her limits, a treatment accorded no other public land State, but the best of these lands were claimed under the warrants of North Carolina. And for years she

[65] Aug. 7, 1846, ch. 92.

[66] In the debate in the House it was held that these claims were barred under the Act of 1841. Globe, 15: 1199.

[67] Townsite of Pulaski, 1811. Feb. 25, 1811, ch. 24.

had to maintain land offices principally for the satisfaction of such grants. In its origin and its later history the North Carolina session is one of the most interesting of the seven which formed the National Domain.

The Yazoo Land Claims

Of all the state cessions that of Georgia occasioned the most controversy, and that because of the long delay in turning the region over to the Federal Government. In the meantime the State had made and rescinded vast grants which laid the foundation of later controversy.

The bounds of Georgia were not well established at the close of the Revolution. The youngest of the colonies, she had been carved out of the South Carolina territories and the older State insisted on a strict interpretation of Georgia's charter claims. In fact the dispute was finally laid before the old Congress and a Federal Court was authorized, but the States decided to settle the matter between themselves and South Carolina finally yielded her claims to the region back of the southern part of the existing Georgia settlements.[68] On the day that this convention was laid before Congress the delegates of South Carolina executed the deed of cession to the United States of her western lands, a strip twelve miles wide stretching along the

[68] West of the headwaters of the St. Mary's and Altamaha. Convention of April 28, 1787.

southern boundary of the present State of Tennessee to the Mississippi River.[69]

On several occasions the Congress of the Confederation urged Georgia and the other backward States to cede their western lands. In 1785 Georgia organized Bourbon County on the Mississippi, south of the Yazoo.[70] Finally on February 1, 1788, an act authorizing the cession passed the State legislature. But this act ceded only the lower half of the western lands and insisted upon a guarantee by Congress of the remainder. The offer was therefore refused and the Confederation passed out of existence with the Georgia and North Carolina cessions unfinished.[71]

Georgia determined to take advantage of the increasing interest in land speculation and by act of December 21, 1789, granted 25,400,000 acres of land to the South Carolina Yazoo Company, the Virginia Yazoo Company and the Tennessee Company, the total payments to be $207,580.[72] The purchasers were to quiet the Indian claims and make final payments within two years, when patents in fee simple would pass. In each case partial payments were made in depreciated paper but final payments of the same kind were refused by

[69] Aug. 9, 1787. J. IV., 771.

[70] Haskins, 64.

[71] July 13, 1788. J. IV., 834.

[72] S. C., 10,000,000 acres, $66,964; Va., 11,400,000 acres, $93,741; Tenn., 4,000,000 acres, $46,875. It is quite impossible to discuss the Yazoo Land Companies without following very closely the excellent treatment of this subject in Prof. Charles H. Haskins' "The Yazoo Land Companies," Papers of the A. H. A. vol. 5: 61-103.

the State authorities, after the Act of June, 1790, which directed the receipt of nothing but specie in the discharge of debts due the State. The South Carolina Company instituted a suit in equity against Georgia only to have it dropped after the ratification of the eleventh amendment of the Constitution.

Such was the first Yazoo sale. The preëmption of the companies had lapsed and the State could again dispose of its western lands. In 1795 the second and more notorious sale was effected.[73] This covered the greater part of the present states of Alabama and Mississippi, some 35,000,000 acres, and the price was $500,000. Four companies were to divide this magnificent region, the Georgia, Georgia-Mississippi, Tennessee, and Upper Mississippi, companies, and their respective shares of the purchase money were $250,000, $155,000, $60,000, and $35,000. At the time this price was estimated at two and one-third cents the acre, but as a matter of fact it would have been nearer one and one-half cents. A total reserve of 2,000,000 acres was to be set apart in the tracts for the benefit of citizens of Georgia who might care to subscribe for the lands on the same terms as the companies.

The act had no sooner been passed than a general protest arose. Whether it had been passed by corrupt means or not the general opinion was that the action was ill advised, and when it was

[73] P. L. I., 132-6.

known that with one exception every member who voted for the grant was interested in some one of the companies the popular resentment was further aroused.[74] At the first meeting of the new Legislature the Act of 1795 was rescinded as having been a violation of the Constitution,[75] and in 1798 the Constitutional Convention incorporated the provisions of the rescinding act in the new Constitution.

It was very natural that the sale of 1795 should have aroused considerable interest in the other States. Even if Georgia were acting well within her legal rights in the matter it was certainly unreasonable that she should be disposing of her western lands while six other States had ceded their claims to the Federal Government. And the opinion was advanced that Georgia really had no title to the lands in question. This was based on the Royal Proclamation of 1763 and the belief that the Province of West Florida had been extended over that region. If this opinion were correct then this part of the West at least must have been won by the whole nation as a result of the Revolution. Against this contention was cited the commission of Governor Wright, of Georgia, in 1764, which distinctly added the back lands to his government, while the actual extension of West Florida was denied.[76] Congress determined to investigate the various claims and in March, 1795, instructed Charles Lee,

[74] Haskins, 84.

[75] Feb. 13, 1796.

[76] F. L. I., 66.

the Attorney-General, to collect, digest, and report all charters or other documents relative to the title to the land in the southwest. His report of April 26, 1796, contained thirty-five documents bearing on the controversy.[77]

In accordance with the policy adopted in the Northwest, Congress did not desire to search the title to these western lands too carefully. If Georgia would quit-claim her rights that would settle the whole controversy. So in 1796 and 1797 committees of the Senate recommended that commissioners from the United States and Georgia meet to settle the claims in question.[78] The second report was distinctly hostile to Georgia's claim, although it favored an amicable settlement. Congress acted on these reports and in 1798 authorized the President to appoint three commissioners to meet with commissioners of Georgia and settle the dispute.[79] The act also established in the disputed region a territorial government similar to that north of the Ohio, although it stated that the right of Georgia to the jurisdiction or lands would not be impaired thereby. So when Georgia, in her constitution signed on May 30th of that year, solemnly asserted her right to the western lands, there was apparently going to be a clash of jurisdiction.

President Adams nominated Timothy Pickering, Secretary of State, Oliver Wolcott, Secretary of

[77] P. L. I., 34-67. [78] P. L. I., 71, 79.

[79] Apr. 7, 1798, ch. 28.

the Treasury, and Samuel Sitgreaves, as commissioners on the part of the United States, and in 1800 their powers were extended to cover an inquiry into private claims in the region.[80] This act also preserved the jurisdiction and rights of Georgia. The next year Jefferson appointed three members of his cabinet in the place of the former commissioners and the articles of agreement and cession of April 24, 1802, were signed by Madison, Gallatin and Lincoln, for the United States and by James Jackson, Abrah Baldwin and John Milledge, for Georgia.[81]

Georgia ceded her right to the jurisdiction and soil of the lands west of her present limits to the Mississippi River. But she laid down several conditions. A payment of $1,250,000 was to be made to her out of the first net proceeds[82] of the land sales there, "as a consideration for the expenses incurred by the said state, in relation to the said territory," and in order that this sum might be paid as soon as possible a land office was to be opened within twelve months of the ratification of the agreement by the State. Legal grants from the governments of West Florida or of Spain as well as claims under the Georgia Act of 1785 were to be confirmed. All the other lands were, after the payment of the million and a quarter to Georgia, to be considered as a common fund, to be faithfully dis-

[80] May 10, 1800. ch. 50.

[81] P. L. I., 125-6. Donaldson, 80.

[82] Gross proceeds less expenses of surveys and sale.

posed of by the United States, with this exception that Congress might, within one year, appropriate 5,000,000 acres for the satisfaction of other claims to land than those already specified. Other conditions required the United States to extinguish, as soon as possible, the Indian titles in Georgia, and provided for the operation of the provisions of the Ordinance of 1787 without the anti-slavery clause.

The United States, in turn, ceded to Georgia a narrow strip along the northern line of that state. This was a part of the South Carolina cession.[83] It was the second instance of a portion of land ceded by one old State being turned over by the Federal Government to another.[84]

The Georgia Legislature ratified the cession on June 16, 1802, while no action was necessary on the part of Congress. The next year Congress provided for the sale of lands in the newly acquired region, according to the agreement in the cession.[85]

On the surface the terms of the cession were not onerous. The payment of a million and a quarter dollars to Georgia would not take very long, the claims of settlers under British and Spanish grants would have been confirmed in any case, but the distribution of 5,000,000 acres among the unspecified claimants was bound to cause difficulties. And, incidentally, Georgia was much dissatisfied later over

[83] The inhabitants of this strip had in 1800 asked that the territory be turned back again to South Carolina, as they were then wholly destitute of government. P. L. I., 103.

[84] Pennsylvania triangle.

[85] Mar. 3, 1803, ch. 27

the conduct of the government in the promised extinguishment of the Indian title within the State limits.

No sooner was it evident that the United States was to take over the western lands of Georgia than the Yazoo claimants turned to Congress for relief, and for the next fifty years their petitions were before that body. In most cases relief came in 1814, but for others the hope was long deferred and never realized.

The Federal commissioners reported on the private claims in 1803 and after deciding against the claims of the companies under the sale in 1789 and expressing the opinion that the claimants under the sale of 1795 would not be able to support their title, reported that it was expedient to compromise with the latter parties.[86] They were willing to accept twenty-five cents an acre for their grants, a total of some eight and a half million dollars. The commissioners rejected this offer and recommended either that the balance of the 5,000,000 acres set aside in the cession, after settlers' rights had been satisfied, should be divided equitably among the companies, or that they should receive certificates, $2,500,000 with interest, or $5,000,000 without interest, to be paid out of land sales after the payment to Georgia was completed.

In the Act of 1803 Congress set aside the 5,000,000 acres for the satisfaction of proper claims but no claim would be considered unless it was recorded

[86] P. L. I., 132-158.

with the Secretary of State before January 1, 1804.

Early in 1805 the Secretary of State reported a list of titles filed with him.[87] Congress apparently had intended to satisfy these claims in some measure, but it was impossible to secure the necessary legislation. This was due to the struggle between the Northern and Southern Democrats, the latter led by John Randolph, the bitter enemy of the Yazoo claims. Year after year the claimants would memoralize Congress, and year after year Randolph would succeed in preventing remedial legislation. The Act of 1807 preventing unauthorized settlements on the public lands was aimed at the Yazoo claimants who sought to test their titles.[88] Any person settling without permission would forfeit whatever title he might possess, while the United States Marshal was instructed to remove squatters.

Finally, however, the controversy was brought before the Supreme Court in the case of Fletcher v. Peck, in 1809.[89] Fletcher sued Peck for $3000, being the price paid for 15,000 acres of land in Georgia originally a part of the Georgia Company's grant. Fletcher claimed that the title of this land sold by Peck had been rendered faulty by the Georgia rescinding act of 1796. After the case was twice argued the court decided, in an opinion by Marshall, that the rescinding act was uncon-

[87] P. L. I., 219-246.

[88] Mar. 3, ch. 46.

[89] 6 Cranch, 87.

stitutional inasmuch as it impaired the obligation of a contract. Therefore the sales of 1795 were valid and the claimants had good reason to expect Congressional relief.

Still Randolph was able to prevent favorable action. In 1813 the Senate passed a compromise measure, and in 1814, a bill passed both Houses, for Randolph had been defeated at the last election.

This act of March 31, 1814, constituted a board of commissioners to determine all controversies arising under the various claims and then provided that $5,000,000 should be divided among the claimants after they had released to the United States all claim to the lands. This amount was apportioned among the companies, the Georgia Company was to receive $2,250,000, the Georgia-Mississippi, $1,500,000, the Tennessee Company $600,000 and the Upper Mississippi Company $350,000, while $250,000 was set aside for claimants under citizen rights. These payments were to be made in non-interest bearing stock payable out of the first moneys received for lands in the Mississippi Territory after the payment to Georgia was completed, but receivable in payment for public land sold within the territory in the proportion of $95.00 in scrip and $5.00 in cash for every $100.00.

The latter provision at once caused trouble for it conflicted with the pledge in the Georgia articles of cession that the $1,250,000 due to her would be paid as soon as possible. Early in 1816 the Missis-

sippi Stock began to be received at the land offices and $52,000 were received that year. President Monroe therefore recommended that the United States pay to Georgia the equivalent in cash of the Mississippi Stock received.[90] Such an act passed in 1817, and at that time $447,000 were still due to Georgia.[91]

In 1818 a final report on the settlement of the Yazoo claims was made and it was found that $4,282,151 had been paid in stock.[92] This flood of paper, receivable for land only in the Mississippi Territory increased the speculation in lands there. Before this stock could be redeemed in cash by the Government the payment of $1,250,000 to Georgia had to be completed. This took place in 1817. In addition to the net proceeds of the land sales in the Georgia cession there was credited toward the sum due from the United States some $184,516 of the original purchase money of the Yazoo Companies remaining in the Treasury of Georgia. The land sales in Mississippi and Alabama were increasing so rapidly that enough land was sold in 1816-17 to meet the entire payment due to Georgia. It was not, however, until May 15, 1820, that the United States Treasury began to redeem the Mississippi stock in cash, paying sixty-six per cent. of the value immediately and the balance the next year. From that date only a few thousand dollars were paid in for land, the recent hard times rendering

[90] P. L. III.,279. [91] March 3, 1817, ch. 36.
[92] Fin. III., 281.

currency more desirable. The total amount of stock received for lands in the Georgia cession was $2,447,789.[93]

It was hardly to be expected that the decision of the commissioners in the Yazoo cases would give universal satisfaction, considering the length of time the lands had been subject to transfer before the relief was afforded. Some eighty claims were rejected entirely by the commissioners and the claim of the New England-Mississippi Company was reduced because it had not paid the entire amount due the Georgia Company.[94] The former company undertook a campaign for Congressional relief. At first the Senate reports were unfavorable but later Congress was advised to grant the $132,425 desired. Congress failed to act, however, and in 1864 the case was decided against the Company in the Court of Claims.[95]

In addition to the Yazoo claims there were other land claims for the Federal Government to satisfy. One of those was the claim of "The Commissioners appointed by Georgia to examine certain lands on the Tennessee River." Seven commissioners were appointed by Georgia in February, 1784, to examine and report on the quantity, quality and circumstances of the lands lying in the Big Bend of the Tennessee River, and to grant warrants of survey there.[96] Five of the original commissioners, with a sixth, serving in the place of one of the first

[93] P. L. VI., 489.
[94] P. L. III., 548.
[95] 1 Court of Claims, 135.
[96] P. L. III., 370, 416, 421, 515.

appointees, made the investigations, granted some warrants, and reported to the Legislature on December 22, 1785. The next year the state granted five thousand acres to each of the commissioners who had performed their duty, but the lands were not located at the time. The matter rested until 1795, when in the Yazoo Act it was provided that out of the lands sold to the Tennessee Company fifty thousand acres should be reserved for the commissioners, to be held by them as tenants in common and not as joint tenants. No action was taken under this grant because of the prompt repeal of the act of sale, nor were the claims recorded with the Secretary of State in 1803 in order to take advantage of the 5,000,000 acres set apart for outstanding claims. In 1816 the claims were laid before Congress by Thomas Carr, the only surviving commissioner, and by the heirs of Colonel Donelson, and of John Sevier. Andrew Jackson, who had married the daughter of Colonel Donelson, represented the latter's heirs. Congress had to determine whether the claims were valid against the United States, and if so, to what extent. It would have been an easy matter to reject the claims because they were not presented within the period named in the Act of 1803 or, possibly, on their merits, as the House Committee on Private Land Claims advised in 1820.[97] But after seven years Congress agreed to make good the grant of five thousand acres to each commissioner, offered by

[97] P. L. III., 421.

Georgia in 1785, the acceptance of which was to serve as a release of any other claim, such as that under the Act of 1795.[98] These lands were at first to be located within Mississippi or Alabama and within two years, but three other acts extended the time limit to 1837 and permitted locations in Louisiana and Arkansas.

Six years later Congress satisfied another outstanding obligation of very doubtful validity. This was in the case of John Reily who, in 1786, had purchased from Abraham Lefavour a land warrant for one thousand acres, issued under the Georgia act of February 25, 1784.[99] These warrants of surveys were sold at the rate of three shillings per annum in gold or silver for every thousand acres. In this case the warrant was never located, the reasons being the hostile attitude of the Indians followed by the cession of the western lands to the United States. Actual settlers under any Georgia grant were protected by the articles of cession, but all other grants were supposed to be covered by the appropriation of five million acres and the claims were to be recorded before January 1, 1804. In 1830 Congress was more liberal in its control of the public lands. In this case it held that John Reily had paid a valuable consideration for his warrant of survey, that it had not been satisfied by Georgia, and that as Congress had succeeded to Georgia's control of the western lands it was incumbent on Congress to satisfy the claim. This

[98] May 24, 1824. [99] P. L. VI., 160.

was done by the act of May 31, 1830, Mr. Reily being authorized to locate one thousand acres of land within the Georgia cession.

After the obligations assumed in the deed of cession had been fulfilled, so far as they concerned land titles, there was another article to cause discussion between the United States and Georgia. The promise of the former to proceed to the rapid extinguishment of the Indian title in Georgia cannot be discussed here.[100]

[100] See Phillips, Georgia and State Rights, A. H. A. Reports, 1901, v. 2.

CHAPTER XIV

THE EARLY LAND SYSTEM AND THE WESTWARD MOVEMENT

The most striking development in the study of American history within recent years has been the recognition of the economic and social forces which have worked toward the making of the American nation.[1] Political history, which formerly was emphasized to the exclusion of almost everything else, has yielded to humbler and yet more important themes. The economic aspects of slavery have found a place along with the political phases of that system. The life and development of the people is considered of more importance than a record of battles or an analysis of Congressional debates. And the one great and comprehensive movement in our history is found in the westward expansion of our people from the coast towns of Colonial days across the Appalachian Mountains to the Mississippi Valley, then to the plains of the farther West and again over mountains and across deserts to the rich valleys of the Pacific Coast. Because of this present and increasing interest it seems fitting that this study of an economic factor in our development should close with a restatement of the various ways in which the early

[1] Turner, The Rise of the New West, xvii.

national land system affected the westward movement of our peoples. This must be a restatement, for every chapter has been concerned with the westward movement in so far as it has described how the public lands passed into private ownership, but the details, necessary in tracing the development of the land system, may have served to confuse the general statements which deserve the more attention.

The movement of settlement beyond the Appalachian Mountains was well under way before the public domain was formed. At the close of the Revolution pioneer settlements were found in the back counties of Pennsylvania and in the western lands of Virginia and North Carolina, corresponding to the eastern portions of the present States of West Virginia, Kentucky, and Tennessee. For the next twenty years the westward movement, as generally understood, was confined largely to these regions, although in many parts of the original States frontier conditions existed, notably in Maine, Vermont, Western New York and Central Georgia. It was not until after 1800 that any great movement began toward the public lands in the northwest. This fact is sometimes overlooked, but the early westward movement was made into state lands and not into the public domain. In theory after 1790 Tennessee was a part of the public domain, but, as has been shown, the lands there were being taken up under North Carolina laws.

In the period from 1800 to 1820, although emigration was moving into the public domain north and south of the Ohio and west of the Mississippi, it must be remembered that only a portion of the western people were holding lands purchased at the land offices. Of the settlers west of the Appalachians in 1820 fully one-half had taken up lands in regions which never had come under the land system, notably in Kentucky and Tennessee. And of the settlers in the public land States and territories the greater part were located on land which had not been surveyed and sold under the general system. Most of these settlers held lands claimed under foreign titles, the investigation and confirmation of which had delayed the surveys and sales in the regions where they were to be found. Others had taken up military bounty lands, either in the Revolutionary bounty land district in Ohio, or in the districts in Illinois, Missouri and Arkansas set apart for the bounties of the War of 1812. These lands could generally be had for less than the minimum price of the public lands. In Ohio were the reserves of Connecticut and Virginia and the tracts sold to the Ohio Company and to John Cleve Symmes, in all of which cheap lands were to be had. And in each state and territory one thirty-sixth of the surveyed lands were reserved for schools and other lands for universities. These reserves were later to be turned over to the States to be disposed of by them, but in 1820 no part of these reserves had been sold. Some of the States

had tried to lease them, but in most cases the lands were being located upon by squatters.[2] And this serves to introduce a most interesting character whose position was gradually changing throughout these years. The squatter took up land in spite of the system and in order to bring him under it some sort of preëmption was considered necessary. Enough has been said, therefore, to indicate that before 1820 the regulations for the sale of public lands affected only a portion, not more than a fourth at most, of the men who were engaged in the westward movement.[3]

2 The term "squatter" first appears in the Congressional debates on February 14, 1806, when Mr. Morrow, speaking of conditions in Indiana, said: "There are some small tracts of land on which what are called *squatters* are settled, and where already improvements have been made, which would sell for four or six dollars per acre." —Annals, 1805-6, 409.

3 The census of 1820 showed the following population in the public land states and territories:

Ohio	581,295
Indiana	147,178
Illinois	55,162
Michigan Territory	8,765
Mississippi	75,448
Alabama	127,901
Louisiana	152,923
Missouri Territory	66,557
Arkansas	14,255
	1,229,484

Western states not subject to the public land system:

Kentucky	422,771
Tennessee	564,135
	986,906

The "Westward Movement" was also in operation in western New York, western Pennsylvania, Virginia, Georgia, etc.

With these facts in mind it is easier to follow the development of the land laws and to note their relation to the Westward movement. When the land ordinance of 1785 was enacted the only legitimate settlement in the Northwest was to be found around the French villages at Vincennes, Kaskaskia, Cahokia, and a few smaller posts—the settlements at Detroit, Green Bay and Mackinac did not come under American control until 1796. Some settlers had crossed the Ohio from Pennsylvania and Virginia at the close of the Revolution, a few settling along that stream and others taking up land near the French establishments. Congress took a high stand regarding these unauthorized settlements. It looked upon the western lands as a great source of revenue and for that reason refused to allow them to be taken up by land-hungry settlers. Troops were sent along the Ohio in 1787 to drive off the intruders and destroy their cabins. More efficacious than the troops were the Indians, and their hostile attitude toward all settlement in the Northwest kept back the pioneers until a stronger Federal government was able to administer the public lands.

There can be little doubt but that, had the Indian

By June 30, 1820, only some 17,600,000 acres of public land had been sold at the land offices, while a rough estimate would show that fully two-thirds as much had been reserved for private land claims, military bounties, and education. No land had been sold in Louisiana, save a few thousand acres placed on sale by mistake at Opelousas. None had been sold in Arkansas Territory, less than 50,000 acres in Michigan, and although about 1,500,000 acres had been sold in Missouri almost half that amount was later relinquished.

relations been more settled in the Northwest, the national land system would have developed along entirely different lines. The settlers from Kentucky would have crossed the Ohio in such numbers that the weak government of the Confederation could not have dispossessed them and it would have had difficulty in extending the rectangular surveys over lands held by any considerable number of settlers under "tomahawk rights." A system of warrants and surveys, to which these settlers were accustomed, would probably then have been introduced. And with the land taken up in this way it is doubtful if the land sales to companies could have been effected. It was well for the national land system that the early westward movement was directed toward state lands.

The Ordinance of 1785 applied only to land northwest of the Ohio. Its terms entirely ignored the men who were then moving toward that region and who had the greatest interest in the lands. For they wanted cheap lands and without delay, whereas the system called for expensive surveys which took time for execution. And pending the surveys they wanted preëmption, the right to locate where they pleased and then secure the tract for a nominal price when the lands were placed on sale. Instead of prior rectangular surveys the western pioneer at that time was in favor of a land system based on low-priced warrants and indiscriminate surveys so run that the first comer could secure the river-bottoms and other good land. The

Ordinance of 1785 favored settlers accustomed to the methods of New England. The surveys, the land grants for education, the sale of half the land in entire townships, showed that township-planting was in the mind of Congress. The smallest tract a man could buy was a lot of six hundred and forty acres at one dollar an acre in depreciated paper, and only half the townships were offered in this way. It is not difficult to understand why the land sales under the Ordinance were so small. The Indian hostilities kept back all but the hardiest pioneers. Settlers demanded land along the Ohio, but the Seven Ranges (of which only four were placed on sale in 1787) extended forty-two miles from the river at one point. Less than 73,000 acres of land were actually sold in 1787, a petty figure compared with the great tracts being taken up in Kentucky and Tennessee under military bounty and treasury warrants. And not one entire township was sold, which showed that for the time being township-planting was not in favor in the west. Some settlement was at once made on the lands purchased in 1787 and the census of 1790 showed other settlements at Marietta, where the Ohio Company had founded a settlement in 1788, and in the Symmes purchase, while squatters had located on unsurveyed lands along the river.

The next sale of public lands took place in 1796, under the act of that year, but it, too, was confined to lands in the Seven Ranges. In 1800 Ohio had a population of 45,000 but only a small part of this

was settled on lands secured under the acts of 1785 and 1796. After Wayne's decisive defeat of the Indians in 1794 and the Greeneville treaty of the next year the first considerable migrations began to Ohio. But no new "Congress lands" were open to selection, so these pioneers turned to the private holdings then in the market. Some located on the lands of the Ohio Company, but more preferred the fine lands in Symmes' purchase, between the Great and the Little Miami. And from Kentucky and Virginia came the holders of Virginia Revolutionary bounty warrants to locate them in the Virginia Reserve. Congress had thrown this region open to the location of these warrants in 1790 but settlement did not take place to any extent until after 1795, and in the following year Chillicothe, for a time the principal town, was founded. The population of Ohio was also swelled by the emigrants who were locating in the Connecticut Reserve, which, of course, was never a part of the public lands. In the last decade the population of Indiana Territory had increased, but the new settlers were locating on lands purchased from the French inhabitants or else were squatting near their villages. No provision whatsoever had been made for the survey or sale of any land in the present states of Indiana and Illinois because of the Indian title.[4]

The Act of 1796 was of importance mainly as a

[4] A narrow strip in southeastern Indiana and a tract including Vincennes, had been ceded by the Greeneville treaty.

statement of principles, for but little land was sold under it. And its terms again ignored the desires of the western men, although a slight concession was made. The most important feature of the act was the endorsement of the system of surveys which had been under attack ever since the Seven Ranges were laid off. From this time no attempt was made to change the system although it was occasionally criticised. The accuracy of the surveys and the sure title conveyed by the deed served to minimize the delays caused by the system, and the inconvenient divisions occasionally created by the rectangular lines. These surveys were not popular in the West at this time because the bulk of the settlers came from the Southern States, where a different system was in vogue. The two dollars an acre minimum was not well thought of when coupled with only a year's credit, for in all the other western regions land was much cheaper and the credit longer. And, finally, the minimum tract was still six hundred and forty acres. It was absurd to suppose a typical pioneer able to pay $1280.00 within a year, yet the Senate had refused to permit the sale of quarter sections. The one-year credit was the only concession, although slight indeed.

Under this act less than 50,000 acres were sold in 1796 in the Seven Ranges. The next sales took place in 1800, under the act of that year, but these were also in the same tract. It was not until 1801 that other land in Ohio was offered for sale.

Under the Act of 1800 the land system became a

real factor in the westward movement, and it was the five-year credit period which rendered the act effective. Without the credit little land could be sold for two dollars an acre, but with it a man could pay fifty cents an acre and the balance within five years. The minimum lot was now reduced to three hundred and twenty acres, so that a payment of one hundred and sixty dollars entitled a settler to the use of a half section pending the payment of the balance—even if he were forced to forfeit the land he had had five years' occupation for that amount. And the land offices were brought nearer to the people—four being established in southern Ohio.

For twenty years the Act of 1800 regulated the sales of public lands, being only modified as to the computation of interest charges and by the introduction of quarter section tracts in 1804 and a limited number of eighty acre tracts in 1817.

During this period the public lands were administered as a source of revenue. For this and for other reasons the representatives of the Eastern States supported the existing land system and resisted all change. The two dollar minimum and the credit system were early denounced by men who best knew the conditions in the West, but eastern men were unwilling to reduce the minimum further—the price still was considered cheap and land values had fallen in the East because of the abundant lands available beyond the mountains. It was believed that high land values in the West

would stop the drain of population and prevent the rise of wages in the industrial states of the East. Moreover even Western Congressmen supported the two dollar minimum because they realized that a reduction in price would be accompanied by an abolition of credit, and they felt that their constituents favored the credit system. The revenue theory of management clashed with the needs of the actual settler. It prevented a reduction in price, a granting of donations to pioneers, and even a general preëmption. But at this period Congress felt that there were other interests to be considered aside from those of the advance guard of the westward movement.

This was the period of the credit system, when men were tempted to invest their entire capital in a first payment in the hope that good times or a generous Congress would easily provide for the balance. Although the extended credit was designed to help the settler it frequently served to imperil his solvency. As early as 1804 Gallatin pointed out that cash sales, based on a reduced price and a smaller minimum lot, should be introduced, but it took sixteen years of increasing financial difficulties to finally arouse Congress against the evils of the well-intended system. As a matter of fact, the credit system did not have a fair opportunity to prove its worth. The passing of relief acts extending the period of forfeiture served to weaken the penalties of the system. Settlers began to believe that Congress would soon come to their

rescue by reducing the outstanding debt, and the relief acts after 1820 justified this confidence. If Congress intended to insist upon using the lands as a source of revenue it should have insisted upon a strict enforcement of the terms of its land system. If penalties had been rigorously enforced there would have been less land speculation. The system in operation really discriminated against the faithful purchaser, for those who owed money in 1820 received later a substantial reduction in their indebtedness.

So much for the system—what, on the other hand, did the actual settlers desire during this period? First of all, they desired a wide choice of land. They wanted the land system extended rapidly and over a large territory. At times they could not wait for the Indian title to be extinguished, but must push on to the choice lands retained by the Red Men. At all times they urged the opening up of the Indian lands, and Government never could move fast enough along these lines. But this was not the fault of the land system, for until Government had acquired the lands the system could not be extended to them. So, when the lands were finally secured, the pioneers demanded that the tracts be at once opened for settlement. This meant the extension of the surveys, and once more Government could not keep pace with the settlers. The surveys took time and required money, and they were extended over good and bad land alike. The first comers natu-

rally desired the choicest lands. They would push a few miles further into the wilderness in order to secure a choicer location. Soon the reports of the Surveyor-General showed that millions of acres of surveyed lands remained unsold, while settlers were complaining that the surveys were not being extended rapidly enough. This was one reason for the squatting evil. Many men took up land in that way, not because they could not afford to pay for their location, but because they could settle upon better land than was then open for sale at the nearest land office. These were the men who sought preëmption.

Another complaint of the settlers was that the land offices were too widely scattered. Figures were prepared showing that intervals of from twenty-five to over one hundred and fifty miles existed between the neighboring land offices. This was a real hardship in those days of difficult transportation, and yet it was but a condition of the frontier life. New land offices were established as business warranted. After an office was once opened it was not easy to close it. The five offices in Ohio transacted less business in 1819 than was handled at eight separate offices nearer the frontier. The late comers could secure their lands with less annoyance, but the choice lands had been taken in the meantime.

The greatest desire of the frontiersmen, so far as the land system was concerned, was for preëmption. This was advocated as a merited right be-

cause of the delay in opening the land for sale. This delay was due in part to the execution of the surveys, but more troublesome were the delays occasioned by the private land claims arising from foreign titles. Until these claims were confirmed or rejected no public land sales could safely be made. But while the commissioners were struggling with the claims in Indiana, Illinois, Michigan, Alabama, Mississippi, and in the Louisiana country, the pioneers pushed into the newly acquired region and took up land, either under a foreign claim or else by calmly squatting on the public land or on the claim of some ancient resident. These settlers took the position that they would gladly have purchased the land if it had been on sale, but as the government was dilatory, surely they should not be penalized by having their improvements bought in over their heads by some less adventurous settler. On the other hand, Congress as early as 1807 passed strict laws against unauthorized settlement, so that the men who demanded preëmption were really violators of the law of the land.

But in this case, as in many others, the bark of Congress was much worse than its bite. Gradually it began to adopt the point of view of the pioneers, until by 1820 it had become the custom to grant preëmption for a limited period in every region where, for special reasons, the land sales were delayed.

A rapid summary of this legislation shows how

the preëmption idea gained strength in Congress until it was finally recognized in the general preemption act of 1841.

Preëmption for settlers was urged in the first debates on the land system in 1789, and it was accepted as a legitimate measure when, in 1790, Congress agreed, as a condition of the North Carolina cession, to confirm the preëmption rights of settlers in Tennessee. In 1799 the first preëmption act was passed, granting the privilege to those settlers in Ohio who had purchased lands from Symmes to which he had no title.[5] This was an act of grace on the part of Congress.

The first act of a more general nature was in 1803, which offered preëmption to persons resident in the Georgia cession at that date. But in this case no land was placed on sale for three years after the act, so settlers coming in during this interval had to become squatters or else purchase private land claims, but to many of these a preëmption was granted in 1808. The early acts for Louisiana offered no concessions to settlers after the date of the American occupation, although the opening of the land offices was bound to be long delayed by private claims.

At this time the surveys in Michigan were being delayed for the same reason, so in 1808 a preëmption was granted to settlers who were there before 1804, which was the date of the act authorizing

[5] Special preëmption acts were passed in 1794, for Ephraim Kimberly; in 1796, for Ebenezar Zane; and in 1798, for Elie Williams.

the sale of lands in Michigan. But, although the sale was authorized at that time, it did not actually commence until 1818, so the preëmption was not a liberal one, and much squatting resulted. In Illinois the sales were also delayed, but there the act of 1813 granted a preëmption of one hundred and sixty acres up to two weeks before the commencement of the public sale, and was therefore more satisfactory than any of the preceding measures. No land could be claimed under any of these acts until it had been surveyed. The next year a similar act was finally passed for Louisiana and Missouri. The last preëmption act within the period was that applying to the "district east of the Island of New Orleans." This region, claimed by Spain, had been occupied by force, partly in 1810 and the rest in 1812. The Act of 1819 granted a donation to settlers there before April 15, 1813, and a preëmption to settlers before April 12, 1814.

By 1820, therefore, Congress had recognized squatting to the extent of granting some measure of preëmption to every one of the public land States and territories save Indiana. With these precedents in mind, a determined effort was made in 1820, at the time of the great alteration of the land laws, to enact a general preëmption law covering one hundred and sixty acres up to two weeks before the commencement of land sales in any district. But although the Western Senators supported the measure, it was carefully laid on the table, for the revenue idea of administration was

too strong to permit the sale of the choicest land at the minimum price to the law-breaking pioneers.

From 1820 to 1841 the representatives of the public land States urged the desirability of a general preëmption act. Beginning in 1830, temporary preëmption laws, covering a limited period but of a general nature, were passed. Finally, in 1841, a general preëmption law was enacted and the long struggle of the pioneer for recognition and for the right to reap the reward of his enterprise was won.

The growth of the sentiment in favor of preemption, therefore, was parallel to the changing conception of the ultimate object of land legislation. So long as revenue was the end to be sought, preëmption was undeniably bad. But if the furtherance of settlement was to be the desire of Congress, then preëmption was but a step toward the ultimate goal—the granting of homesteads to settlers. So during the half century of land legislation the squatter developed from a trespasser, a violator of the laws of the Union, to a public benefactor, a man whose bravery and whose sacrifices had opened great areas to peaceful settlement and who merited well of the nation. The "actual settler" always received a certain sympathy in Congress. The land laws were stringent enough to punish intrusions upon the public domain, but remembering how frequently squatters hold lands even within our cities, it is easy to understand how difficult it was to enforce the laws prohibiting un-

lawful settlement along the thousands of miles of the public land frontier. So it became the custom not to enforce these stringent laws. And after the pioneer had once crossed the line and made his improvements, it became more and more difficult for Congress to refrain from securing him in the rewards of his hardihood. Except where there were confirmed foreign claims, the frontier of settlement should legally have been along the frontier of surveys. But no Western Congressman expected that the more restless of his constituents would march in procession with rod-men and chain-carriers. The laws for the disposition of the public lands assumed that when a group of townships were cried at public auction the land would be virgin, untamed and unencumbered. But too often the surveyors' lines had run beside log cabins and half-faced camps, and the best tracts had been cleared and fenced. The land system demanded that these quarter-sections be sold to the highest bidder, and it frequently happened that these settlers who had pushed out from more developed regions had placed almost their whole capital in their little clearing. Without preëmption, one of three things generally happened—the squatter, unable to pay anything at all for his land, would sell his improvements to the purchaser of the tract and would then move further out into the wilderness, or he would bid the minimum price for his land and public sentiment would protect him from competition, or his land would be purchased by

someone who would refuse to pay for his improvements and yet who would be strong enough to procure his eviction. The theory of the land system was best met by the latter case. The land should be sold to the highest bidder—and there should be no sentiment about it.

It was not a pleasant rôle for Congressmen to denounce the squatters. They were law-breakers, to be sure, and yet in many cases they were very estimable criminals. And when the land revenue was no longer needed to help support the government, it became easy, even for Congressmen from the East and South, to favor more liberal treatment for the actual settler.

After 1820 the relation of the land system to the westward movement became more intimate. The reduction in price and the abolition of credit made it easier for the actual settler to secure a small tract of land. One hundred dollars would purchase outright eighty acres, whereas formerly eighty dollars would be but a first payment on a quarter-section. As the surveys were extended further away from the older settlements they were less hampered by the private land claims and so could better serve the rapidly advancing people. And then, in the 'twenties, began the system of land grants for internal improvements, which encouraged roads, canals, and railways, causing millions of acres of land to pass into private ownership through the agency of the State or the corporations rather than through the land offices, and

opening up for settlement great regions away from the rivers, for the earlier settlements had clung closely to those avenues of transportation. Finally, in 1821, the public land States could muster fourteen votes in the Senate, and if the West might differ within itself on other policies, it stood as a unit on the great questions of land administration. Each new State increased this political strength. Preëmption came in 1841, Benton's graduation act in 1854, and Homesteads in 1862. And during these years the railway land grants were becoming more lavish, culminating in the great grants to the Pacific railways, while the bounty land legislation of the 'fifties caused the issue of warrants for millions of acres which were sold for less than the existing minimum price. But this story cannot be narrated here.

Down to 1820, therefore, the land system paid more attention to revenue than to the settler, but the emphasis was slowly being shifted toward the more desirable side. And, in spite of errors both of commission and of omission, the system was, on the whole, commendable. Its surveys alone would have made it notable. They rendered the settlement orderly and afforded sound titles for all time. And, finally, it was a national land system. It is not difficult to imagine what would have happened if the old claimant States had held control of their Western lands, or if the new States had been entrusted with them on admission to the Union. The national land system was subject to no little

criticism, yet what would have been the case under a dozen or more systems? And as to the westward movement—the old land system encouraged it in many ways. The average settler welcomed the accurate surveys, the relatively cheap lands, and the credit system; the speculator saw in the extended credit an opportunity to make a fortune, and his class undoubtedly directed many real settlers toward the West; and the restless pioneer, whose only capital was an ax and a gun, was not troubled by the system. He moved in advance of the surveyors and settled for a while as a squatter. And when his land was placed on the market, he could generally choose between buying his land and becoming a settler or moving on again in advance of the civilization he could not endure.

THE END

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APPENDIX

APPENDIX I

LANDS CEDED BY THE STATES TO THE UNITED STATES.

Northwest of the Ohio River.	Square miles	
Ohio	39,964	
Indiana	33,809	
Illinois	55,414	
Michigan	56,451	
Wisconsin	53,924	
Minnesota, east of the Mississippi River	26,000	
	265,562	or 169,959,680 acres

Virginia claimed this entire region.

New York claimed an indefinite amount.

Connecticut claimed about 25,600,000 acres and ceded all but 3,300,000.

Massachusetts claimed about 34,560,000 acres.

South of Kentucky.

South Carolina ceded about 3,136,000 acres.

North Carolina ceded (nominally) 29,184,000 acres.

Georgia ceded 56,689,920 acres.

APPENDIX II.

AN ORDINANCE FOR ASCERTAINING THE MODE OF DISPOSING OF LANDS IN THE WESTERN TERRITORY.

J. IV., 520-2.

Passed May 20, 1785.

"Be it ordained by the United States in Congress assembled, that the territory ceded by individual states to the United States, which has been purchased of the Indian inhabitants, shall be disposed of in the following manner:

"A surveyor from each state shall be appointed by Congress or a commitee of the states, who shall take an oath for the faithful discharge of his duty, before the geographer of the United States, who is hereby empowered and directed to administer the same; and the like oath shall be administered to each chain carrier, by the surveyor under whom he acts.

"The geographer, under whose direction the surveyors shall act, shall occasionally form such regulations for their conduct, as he shall deem necessary; and shall have authority to suspend them for misconduct in office, and shall make report of the same to Congress, or to the committee of the states; and he shall make report in case of sickness, death, or resignation of any surveyor.

"The surveyors, as they are respectively qualified, shall proceed to divide the said territory into townships of 6 miles square, by lines running due north and south, and others crossing these at right angles, as near as may be, unless where the boundaries of the late Indian purchases may render the same impracticable, and then they shall depart from this rule no farther than such particular circumstance may require. And each surveyor shall be allowed and paid at the rate of two dollars for every mile, in length, he shall run, including the wages of chain carriers, markers, and every other expense attending the same.

"The first line, running due north and south as aforesaid, shall begin on the river Ohio, at a point that shall be found to be due north from the western termination of a line, which has been run as the southern boundary of the state of Pennsylvania; and the first line, running east and west, shall begin at the same point, and shall extend throughout the whole territory; provided, that nothing herein shall be construed, as fixing the western boundary of the state of Pennsylvania. The geographer shall designate the townships, or fractional parts of townships, by numbers progressively from south to north; always beginning each range with No. 1; and the ranges shall be distinguished by their progressive numbers to the westward. The first range, extending from the Ohio to the lake Erie, being marked No. 1. The geographer shall personally attend to the running of the first east and west line; and shall take the latitude of the extremes of the first north and south line, and of the mouths of the principal rivers.

"The lines shall be measured with a chain; shall be plainly marked by chaps on the trees, and exactly described on a plat; whereon shall be noted by the surveyor, as their proper distances, all mines, salt-springs, salt-licks, and mill-seats, that shall come to his knowledge; and all water-courses, mountains and other remarkable and

permanent things, over and near which such lines shall pass, and also the quality of the lands.

"The plats of the townships respectively, shall be marked by subdivisions into lots of one mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 36; always beginning the succeeding range of the lots with the number next to that with which the preceding one concluded. And where, from the causes before-mentioned, only a fractional part of a township shall be surveyed, the lots, protracted thereon, shall bear the same numbers as if the township had been entire. And the surveyors, in running the external lines of the townships, shall, at the interval of every mile, mark corners for the lots which are adjacent, always designating the same in a different manner from those of the townships.

"The geographer and surveyors shall pay the utmost attention to the variation of the magnetic needle; and shall run and note all lines by the true meridian, certifying, with every plat, what was the variation at the times of running the lines thereon noted.

"As soon as 7 ranges of townships, and fractional parts of townships, in the direction from south to north, shall have been surveyed, the geographer shall transmit plats thereof to the board of treasury, who shall record the same, with the report, in well bound books to be kept for that purpose. And the geographer shall make similar returns, from time to time, of every 7 ranges as they may be surveyed. The secretary at war shall have recourse thereto, and shall take by lot therefrom, a number of townships, and fractional parts of townships, as well from those to be sold entire, as from those to be sold in lots, as will be equal to one-seventh part of the whole of such 7 ranges, as nearly as may be, for the use of the late continental army; and he shall make a similar draught, from time to time, until a sufficient quantity is drawn to satisfy the same, to be applied in manner hereinafter directed. The board of treasury shall, from time to time, cause the remaining numbers, as well those to be sold entire, as those to be sold in lots, to be drawn for, in the name of the thirteen states respectively, according to the quotas in the last preceding requisition on all the states; provided, that in case more land than its proportion is allotted for sale in any state, at any distribution, a deduction be made therefor at the next.

"The board of treasury shall transmit a copy of the original plats, previously noting thereon, the townships, and fractional parts of townships, which shall have fallen to the several states, by the distribution aforesaid, to the commissioners of the loan-office of the several states, who, after giving notice of not less than two nor

more than six months, by causing advertisements to be posted up at the court-houses, or other noted places in every county, and to be inserted in one newspaper, published in the states of their residence respectively, shall proceed to sell the townships, or fractional parts of townships, at public vendue; in the following manner, viz: The township, or fractional part of a township, No. 1, in the first range, shall be sold entire; and No. 2, in the same range, by lots; and thus in alternate order through the whole of the first range. The townships, or fractional part of a township, No. 1, in the second range, shall be sold by lots; and No. 2, in the same range, entire; and so in alternate order through the whole of the second range; and the third range shall be sold in the same manner as the first, and the fourth in the same manner as the second, and thus alternately throughout all the ranges; provided, that none of the lands, within the said territory, be sold under the price of one dollar the acre, to be paid in specie, or loan-office certificates, reduced to specie value, by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the survey and other charges thereon, which are hereby rated at 36 dollars the township, in specie, or certificates as aforesaid, and so in the same proportion for a fractional part of a township, or of a lot, to be paid at the time of sales; on failure of which payment, the said lands shall again be offered for sale.

"There shall be reserved for the United States out of every township the four lots, being numbered 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale. There shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township; also one-third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct.

(Here follow the terms of the deed to be given when a township or a lot is sold.)

"Which deeds shall be recorded in proper books, by the commissioner of the loan office, and shall be certified to have been recorded, previously to their being delivered to the purchaser, and shall be good and valid to convey the lands in the same described.

"The commissioners of the loan-offices respectively, shall transmit to the board of treasury every three months, an account of the townships, fractional parts of townships, and lots committed to their charge; specifying therein the names of the persons to whom sold, and the sums of money or certificates received for the same; and shall cause all certificates by them received, to be struck through

with a circular punch; and shall be duly charged in the books of the treasury, with the amount of the money or certificates, distinguishing the same, by them received as aforesaid.

"If any township, or fractional part of a township or lot, remains unsold for 18 months after the plat shall have been received, by the commissioners of the loan-office, the same shall be returned to the board of treasury, and shall be sold in such manner as Congress may hereafter direct.

"And whereas Congress, by their resolutions of September 16th and 18th, in the year 1776, and the 12th of August, 1780, stipulated grants of land to certain officers and soldiers of the late continental army, and by the resolution of the 22nd September, 1780, stipulated grants of land to certain officers in the hospital department of the late continental army; for complying therefore with such engagements, Be it ordained, That the secretary at war, from the returns in his office, or such other sufficient evidence as the nature of the case may admit, determine who are objects of the above resolutions and engagements, and the quantity of land to which such persons or their representatives are respectively entitled, and cause the townships, or fractional parts of townships, hereinbefore reserved for the use of the late continental army, to be drawn for in such manner as he shall deem expedient, to answer the purpose of an impartial distribution. He shall, from time to time, transmit certificates to the commissioners of the loan-offices of the different states, to the lines of which the military claimants have respectively belonged, specifying the name and rank of the party, the terms of his engagement and time of his service, and the division, brigade, regiment or company to which he belonged, the quantity of land he is entitled to, and the township, or fractional part of a township, and range out of which his portion is to be taken.

"The commissioners of the loan-offices shall execute deeds for such undivided proportions in manner and form herein before-mentioned, varying only in such a degree as to make the same conformable to the certificate from the secretary at war.

"Where any military claimants of bounty in lands shall not have belonged to the line of any particular state, similar certificates shall be sent to the board of treasury, who shall execute deeds to the parties for the same.

"The secretary at war, from the proper returns, shall transmit to the board of treasury, a certificate, specifying the name and rank of the several claimants of the hospital department of the late continental army, together with the quantity of land each claimant is entitled to, and the township, or fractional part of a township, and

range out of which his portion is to be taken; and thereupon the board of treasury shall proceed to execute deeds to such claimants.

"The board of treasury, and the commissioners of the loan-offices in the states, shall, within 18 months, return receipts to the secretary at war, for all deeds which have been delivered, as also all the original deeds which remain in their hands for want of applicants, having been first recorded; which deeds so returned, shall be preserved in the office, until the parties or their representatives require the same.

"And be it further ordained, That three townships adjacent to lake Erie be reserved, to be hereafter disposed of in Congress, for the use of the officers, men, and others, refugees from Canada, and the refugees from Nova Scotia, who are or may be entitled to grants of land under resolutions of Congress now existing or which may hereafter be made respecting them, and for such other purposes as Congress may hereafter direct.

"And be it further ordained, That the towns of Gnadenhutten, Schoenbrun and Salem, on the Muskingum, and so much of the lands adjoining to the said towns, with the buildings and improvements thereon, shall be reserved for the sole use of the Christian Indians, who were formerly settled there, or the remains of that society, as may, in the judgment of the geographer, be sufficient for them to cultivate.

"Saving and reserving always, to all officers and soldiers entitled to lands on the northwest side of the Ohio, by donation or bounty from the commonwealth of Virginia, and to all persons claiming under them, all rights to which they are so entitled, under the deed of cession executed by the delegates for the state of Virginia on the first day of March, 1784, and the act of Congress accepting the same: and to the end, that the said rights may be fully and effectually secured, according to the true intent and meaning of the said deed of cession and act aforesaid, Be it ordained, that no part of the land included between the rivers called Little Miami and Scioto, on the northwest side of the river Ohio, be sold, or in any manner alienated, until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession and act of Congress accepting the same.

"Done by the United States in Congress assembled, the 20th day of May, in the year of our Lord, 1785, and of our sovereignty and independence the ninth.

"Richard H. Lee, President,
"Charles Thompson, Secretary."

APPENDIX III.

EXTENSION OF THE LAND SYSTEM.

ESTIMATE OF THE QUANTITY OF LAND IN EACH LAND DISTRICT OF THE UNITED STATES; THE QUANTITY SURVEYED; THE AMOUNT OF RESERVATIONS AND PRIVATE CLAIMS; THE AMOUNT OF SALES; AND THE AMOUNT UNSOLD TO OCTOBER 1ST, 1821. P. L. III., 533.

	Total Acres.	Reservations. Surveyed.	Private Claims.	Amount Sold.	Unsold.
OHIO					
Marietta.....	576,000	Whole	16,000	179,511	473,289
Ohio Co.....	1,344,160	Whole	.....	.....	.....
Zanesville.....	2,367,360	Whole	697,760	913,915	755,685
Steubenville...	1,935,360	Whole	53,760	1,571,691	309,909
Chillicothe.....	3,109,760	Whole	945,172	1,032,102	1,122,486
Cincinnati.....	3,709,440	Whole	103,640	2,755,059	850,741
Wooster.....	1,244,160	Whole	34,560	908,579	301,021
Piqua.....	2,983,800	Whole	243,533	6,125	2,734,142
Delaware.....	2,321,280	1,971,840	279,371	75,724	1,966,185
IND.					
Vincennes.....	5,450,400	Whole	151,400	1,436,497	3,852,503
Jeffersonville..	2,856,960	Whole	79,360	1,287,732	1,489,868
Brookville....	3,768,960	1,751,040	104,693	256,754	3,407,513
Terre Haute..	3,600,000	1,290,240	100,000	30,977	3,469,023
ILL.					
Shawneetown..	3,018,240	Whole	83,840	592,464	2,401,936
Kaskaskia.....	2,188,800	Whole	152,960	419,898	1,615,942
Edwardsville..	(Indef.)	3,271,680	136,960	437,993	2,696,727*
Palestine.....	(Indef.)	2,693,760	82,326	714	2,880,720*
Vandalia.....	(Indef.)	2,626,560	72,960	7,923	2,545,677*
MICH.					
Detroit.....	10,399,360	2,396,160	378,250	71,975	9,949,135
MO.					
St. Louis.....	8,893,440	4,331,520	316,160	546,254	8,031,026
Franklin.....	15,298,560	5,091,840	983,400	759,946	13,544,215
Cape Girardeau.....	15,022,080	4,124,160	463,360	28,534	14,530,186
ARK.					
Lawrence Co.	17,395,200	2,488,320	1,506,880	None	.....
Arkansas....	13,547,520	2,741,760	1,026,560	2,411	12,518,549

	Total Acres.	Surveyed.	Reservations. Private Claims.	Amount Sold.	Unsold.
La.					
No. Dist.....	9,484,640	567,000	1,507,469	None	.....
S. W. Dist..	10,613,120	1,405,440	754,888	None	.....
New Orleans..	.....	.....	.....	.....	.....
St. Helena Dist.....	3,136,000	.....	.....	.....	.....
Miss.					
W. of Pearl River.....	3,502,080	Whole	604,160	1,182,673	1,715,247
Jackson, Ct. House.....	2,097,600	No surveys	.....	.....	.....
Ala.					
E. of Pearl R.	6,904,320	5,253,120	254,386	944,000	5,705,934
Huntsville....	8,037,120	5,276,160	223,253	1,510,918	6,338,949
Cahawba.....	8,812,800	4,308,480	244,800	1,576,865	6,991,135
Tuscaloosa....	6,451,200	1,221,120	179,200	64,294	6,207,706
Conecuh.....	2,880,000	92,160	80,000	None	.....

The reservations include private claims, school lands, Indian reservations, etc. * Boundaries not defined.

APPENDIX IV.

DISTANCES BETWEEN LAND OFFICES, AGREEABLE TO MELISH'S MAP OF THE UNITED STATES.

P. L. III., 534.

	MILES
From Zanesville to Chillicothe	66
" Zanesville to Marietta	48
" Zanesville to Steubenville	67
" Zanesville to Wooster	56
" Zanesville to Delaware	65
" Chillicothe to Marietta	82
" Marietta to Steubenville	72
" Steubenville to Wooster	67
" Wooster to Delaware	70
" Delaware to Detroit	148
" Delaware to Piqua	53
" Piqua to Chillicothe	85
" Chillicothe to Cincinnati	80
" Cincinnati to Piqua	70

		MILES
From	Cincinnati to Brookville	27
"	Cincinnati to Jeffersonville	73
"	Jeffersonville to Vincennes	100
"	Vincennes to Palestine	23
"	Palestine to Terre Haute	32
"	Terre Haute to Vandalia	85
"	Vandalia to Shawneetown	95
"	Shawneetown to Vincennes	65
"	Vincennes to Vandalia	74
"	Vandalia to Edwardsville	38
"	Edwardsville to St. Louis	26
"	St. Louis to Kaskaskia	50
"	St. Louis to Franklin	144
"	Kaskaskia to Cape Girardeau[1]	54
"	Cape Girardeau to Napoleon[2]	164
"	Napoleon to Little Rock[3]	95
"	Little Rock to Arkansas (Post)[4]	80
"	Arkansas (Post) to Monroe	105
"	Monroe[5] to Washington	86
"	Washington[6] to Opelousas	83
"	Washington to St. Helena	62
"	St. Helena to Opelousas[7]	78
"	St. Helena to New Orleans	50
"	New Orleans to St. Stephens[8]	157
"	St. Stephens to Cahawba	60
"	Cahawba to Tuscaloosa	73
"	Tuscaloosa to Huntsville	100

[1] Jackson, Cape Girardeau County.
[2] Land office was at Polk Bayou in 1821.
[3] Little Rock was the seat of the "Arkansas" Land Office.
[4] There was no land office at Arkansas Post.
[5] Monroe, i. e. Northern District of Louisiana.
[6] Washington, i. e. West of Pearl River, Mississippi.
[7] Opelousas, i. e. Southwestern District of Louisiana.
[8] St. Stephens, i. e. East of Pearl River.

APPENDIX V.

ESTIMATED AREA OF INDIAN LAND CESSIONS.

1820. P. L. III., 461.

	ACRES	
1795, Greeneville—Wyandots, etc...	11,808,499	Exclusive of Va. mil. lands.
1805, Ft. Industry—Wyandots, etc...	1,030,400	
1807, Detroit—Wyandots, etc.	7,862,400	
1803, Ft. Wayne—Delawares, etc...	2,038,400	
1803, Vincennes—Kaskaskias	8,911,850	
1804, Vincennes—Delawares and Piankeshaws	1,921,280	
1805, Grouseland—Delawares, etc. ..	1,572,480	
1805, Vincennes—Piankeshaws	2,076,160	
1809, Ft. Wayne—Delawares, etc...	3,257,600	
1809, Vincennes—Kickapoos	138,240	
1816, St. Louis—Ottaways, etc. ...	1,274,880	
	144,000	
1804, St. Louis—Sac and Fox	9,803,520	
1806, Washington—Cherokees	1,209,600	Balance in Tennessee.
1816, Turkeytown—Cherokees	1,395,200	
1805, Chickasaw Co.—Chickasaws ..	345,600	Balance in Tenn.
1801, Ft. Adams—Choctaws	2,641,920	
1802, Ft. Confed.—Choctaws	853,760	
1805, Mt. Dexter—Choctaws	4,142,720	
1814, Ft. Jackson—Creeks	14,284,800	Residue in Ga.
1808, Ft. Clark—Gt. and Little Osages	50,269,440	
1817, Rapids—Wyandots	4,377,600	
1817, Rapids—Pottawatamies, etc. .	430,080	
1818, St. Mary's — Pottawatamies, etc.	1,109,760	
1818, St. Mary's—Miamis	5,867,520	
1818, Edwardsville—Peorias	6,865,280	
1818, St. Louis—Quapaws	30,690,560	
1818, St. Louis—Gt. and Little Osages	7,392,000	
1819, Washington—Cherokees	566,400	Residue in Tenn. and Ga.

	ACRES	
1819, Saginaw—Chippewas	4,321,280	
1819, Ft. Harrison—Kickapoos of Vermilion	3,173,120	
	191,776,349	
	202,187	Penn. Triangle.
	191,978,536	

APPENDIX VI.

LAND SALES, 1800-1807.

	1800-1	1801-2	1802-3	1803-4	1804-5	1805-6	1806-7
Steubenville	161,039	164,146	79,122	122,991	150,552	124,068	36,526
	$322,078	*328,291*	*158,243*	*251,973*	*301,104*	*265,864*	*74,971*
Marietta	3,919	1,902	*2,826	7,101	2,688	3,809	668
	$10,085	*3,805*	*5,653*	*14,227*	*5,376*	*11,498*	*3,491*
Chillicothe	163,263	29,766	34,368	97,733	119,740	95,564	40,178
	$358,329	*59,533*	*68,737*	*195,811*	*239,729*	*205,532*	*92,907*
Cincinnati	70,426	144,196	82,764	134,563	317,286	187,414	124,284
	$144,396	*288,391*	*165,529*	*287,673*	*631,745*	*393,751*	*250,511*
Zanesville	.....	.....	.....	11,224	29,000	62,357	37,259
				$23,168	*59,999*	*124,714*	*74,518*
Vincennes	.....	.....	.....	.....	.....	.....	45,265
							$92,213
West of Pearl River.	.....	.....	.....	.....	.....	.....	†70,068
							$141,413
East of Pearl River.	.....	.....	.....	.....	.....	.....	‡4,125
							$8,250

* To July 1.

† To July 31.

‡ To Feb. 28.

APPENDIX VII.

LAND SALES, 1808-1814.

	1807-8	1808-9	1809-10	1810-11	1811-12	1812-13†	1813-14
Steubenville	24,207	15,363	22,682	18,886	67,199	47,108	107,834
	$69,667	*46,837*	*60,454*	*46,363*	*151,515*	*108,390*	*242,217*
Marietta.....	1,237	2,849	2,476	3,833	3,357	3,570	9,076
	$2,473	*9,146*	*5,913*	*8,787*	*7,765*	*7,462*	*20,392*
Chillicothe	19,028	12,924	9,722	12,017	18,574	21,006	37,067
	$40,891	*44,240*	*23,233*	*30,673*	*42,972*	*44,369*	*86,595*
Cincinnati.....	51,474	39,728	25,546	67,116	160,018	90,619	229,548
	$115,164	*109,550*	*57,493*	*152,058*	*361,792*	*211,594*	*470,462*
Zanesville	22,560	16,413	41,846	27,639	38,690	25,612	80,992
	$45,121	*33,150*	*84,023*	*56,573*	*78,025*	*51,864*	*163,990*
Vincennes.....	22,951	16,702	11,715	14,638	13,619	*13,366	48,840
	$45,902	*33,403*	*23,430*	*29,276*	*27,237*	*26,733*	*98,021*
West of Pearl River.	13,820	60,063	23,424	33,449	58,362	5,845	11,294
	July 13						
	$27,640	*120,126*	*46,847*	*66,899*	*117,399*	*11,689*	*22,589*
East of Pearl River.	4,073	3,613	.....	.....	64,301	3,221	2,334
	July 13	June 30					
	$8,146	*7,226*	.....	.....	*135,254*	*6,443*	*4,668*
Canton	21,608	16,391	17,603	27,131	54,685	23,410	214,338
	$46,263	*33,377*	*35,206*	*54,262*	*109,369*	*46,821*	*428,659*
Jeffersonville	32,514	23,040	27,252	35,756	35,524	31,655	86,773
	$67,694	*46,079*	*54,504*	*71,512*	*71,048*	*63,309*	*174,008*
Madison Co.	.....	23,960	53,612	48,464	22,209	21,195	27,644
			June 30				
	.....	*$67,520*	*111,279*	*97,923*	*47,251*	*42,527*	*55,289*
Shawneetown	.....	.....	.....	.....	.....	.....	8,836
	.....	.....	.....	.....	.....	.....	*17,673*

† After 1811-2 reverted lands are deducted from land sold.

* 16,365 a. reverted at Vincennes, but *not* deducted.

APPENDIX VIII.

LAND SALES, 1815-1820.

			(Jan. 1-Dec. 31), 1820		
	1814-15	1816-17	1818-19	1819	To July 1
Steubenville	112,260	54,566	14,741	13,637	2,847
	$248,444	*123,196*	*32,668*	*28,879*	*6,969*
Marietta	26,554	24,050	8,829	4,954	886
	$ 57,576	*52,461*	*22,622*	*14,014*	*2,092*
Chillicothe	57,678	72,048	34,770	26,083	2,842
	$129,557	*148,381*	*71,630*	*53,774*	*5,314*
Cincinnati	251,012	256,712	74,409	57,674	4,207
	$529,927	*525,979*	*166,483*	*128,544*	*8,415*
Zanesville	126,124	105,393	47,802	33,574	4,549
	$256,273	*212,381*	*99,077*	*69,376*	*9,038*
Vincennes	53,236	325,361	214,415	142,602	11,870
	$106,473	*601,303*	*428,831*	*285,204*	*23,740*
West of P.	2,833	175,609	.....	134,388	4,281
	$ 5,666	*352,213*	.....	*257,493*	*8,402*
East of P.	5,155	264,823	.....	224,401	5,848
	$ 10,310	*566,544*	.....	*719,565*	*17,123*
				Wooster	
Canton	257,472	86,064	10,940	11,042	1,436
	$514,600	*405,251*	*22,997*	*22,201*	*2,871*
Jeffersonv.	125,903	261,143	108,736	64,932	6,360
	$251,805	*522,286*	*217,472*	*129,864*	*12,720*
			Huntsville		
Madison Co., Ala.	19,266	2,649	774,988	134,578	35,879
	$38,532	*5,298*	*4,775,303*	*220,581*	*91,434*
Shawneetown	51,735	67,084	161,654	118,934	18,107
	$129,017	*134,198*	*325,316*	*239,522*	*36,981*

APPENDIX (Continued).

LAND SALES, 1815-1820.

	1814-15	1816-17	1818-19	(Jan. 1-Dec. 31), 1820 1819	To July 1
Kaskaskia	31,005	78,508	124,303	60,355	5,609
	$ 62,010	*157,015*	*248,607*	*120,711*	*11,217*
Edwardsville	.....	104,074	97,398	90,756	6,640
	.....	*$208,417*	*200,596*	*187,311*	*13,290*
			Cahawba		
Milledgeville	.....	174,010	1,046,564	782,747	239,979
	.....	*$753,849*	*3,764,431*	*2,681,585*	*894,185*
Detroit	.....	.....	32,756	14,986	2,915
	.....	.....	*$ 67,114*	*20,799*	*5,830*
			To Aug. 1		
Franklin, Mo.	.....	.....	662,434	471,460	32,848
	.....	.....	*$1,894,906*	*1,326,290*	*66,620*
St. Louis	.....	.....	470,990	324,429	16,120
	.....	.....	*$1,141,341*	*787,543*	*32,347*

APPENDIX IX

LAND SOLD, RECEIPTS, AND BALANCES UNPAID.

NORTHWEST OF THE OHIO.

	Lands Sold			Receipts		Balances
	Quantity	Price	Lands Reverted	For Purchase Money	On Sale of Forfeitures	Unpaid by Purchaser
1800 and 1801.....	398,646	$834,887	Omitted	248,461	$2,148	$586,426
1802.....	340,010	680,020	.....	220,867	207	459,152
1803.....	181,068	398,161	.....	246,000	222	1,092,390
1804.....	373,612	772,852	.....	431,030	966	1,434,213
1805.....	619,266	1,235,953	.....	575,860	1,102	2,094,306
1806.....	473,212	1,001,358	.....	850,106	1,589	2,245,558
1807.....	284,180	588,610	.....	680,861	7,343	2,153,306
1808.....	195,579	423,445	.....	545,078	3,129	2,041,673
1809.....	143,409	355,783	.....	484,752	6,168	1,912,704
1810.....	158,844	344,256	.....	610,318	25,373	1,646,642
1811.....	207,017	449,503	acres	599,773	49,542	1,496,372
1812.....	391,665	849,632	94,076	746,897	47,431	1,599,106
1813.....	239,981	560,541	123,571	643,056	63,262	1,483,861
1814.....	823,264	1,702,016	33,649	1,050,888	13,950	2,134,990
1815.....	1,092,980	2,285,681	42,435	1,256,734	7,484	3,163,937
1816.....	1,131,956	2,464,793	54,008	1,294,081	12,930	4,334,648
1817.....	1,414,952	3,090,868	79,287	1,797,719	27,733	5,627,797
To Jan. 1 1818.....	460,889	922,908	22,491	538,105	4,588	6,017,158
To Sept. 30 1818.....	1,245,107	2,571,337	46,221	1,471,631	5,809	7,290,490
To Sept. 30 1819.....	2,064,178	4,939,659	153,309	2,387,187	25,334	9,868,295
	12,239,816	$26,482,262	649,058	16,679,406	$306,682	

APPENDIX (Continued)

LAND SOLD, RECEIPTS, AND BALANCES UNPAID.

MISSISSIPPI AND ALABAMA.

	Lands Sold			Receipts		Balances
	Quantity	Price	Lands Reverted	For Purchase Money	On Sale of Forfeitures	Unpaid by Purchaser
1807.....	74,832	$149,663	.....	$37,750	.....	$111,913
1808.....	17,893	35,786	.....	8,946	.....	138,753
1809.....	87,636	194,872	.....	60,142	$113	273,483
1810.....	77,036	158,126	.....	41,413	372	390,195
1811.....	81,913	164,822	.....	80,476	305	474,541
1812.....	144,873	299,904	5,530	121,377	541	653,068
1813.....	30,261	60,659	1,608	83,452	144	630,275
1814.....	41,272	82,545	2,476	123,811	758	589,009
1815.....	27,254	54,508	2,616	111,784	537	531,733
1816.....	490,874	1,102,481	95,143	364,116	44,007	1,270,098
To Sept. 30						
1817.....	617,090	1,677,903	23,613	546,494	6,748	2,401,507
To Dec. 31						
1817.....	127,330	253,638	17,815	133,774	7,039	2,526,410
To Sept. 30						
1818.....	695,849	3,715,753	53,787	1,087,799	16,624	5,170,989
To Sept. 30						
1819.....	2,278,046	9,705,889	137,179	2,773,723	29,207	12,132,362
	4,792,157	$17,656,549	339,766	$5,577,058	106,396	

* WEST OF THE MISSISSIPPI

1819.....	1,133,425	3,036,246	74,533	833,541	17,166	2,219,872

* Included in statement of sales northwest of the Ohio.
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